

Exhibit 1

1 COX, WOOTTON, GRIFFIN,
 2 HANSEN & POULOS LLP
 3 Gregory W. Poulos (SBN 131428)
 4 Max L. Kelley (SBN 205943)
 5 190 The Embarcadero
 6 San Francisco, CA 94105
 7 Telephone No.: 415-438-4600
 8 Facsimile No.: 415-438-4601

9 Attorneys for Plaintiff
 10 DEL MAR SEAFOODS, INC.

E-filing

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FILED

JUN - 7 2007

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

13 DEL MAR SEAFOODS, INC.

C 07 Case No.: 2952

WR4

14 Plaintiff,

15 vs.

16 BARRY COHEN, CHRIS COHEN (aka
 17 CHRISTENE COHEN), *in personam* and
 F/V POINT LOMA, Official Number
 515298, a 1968 steel-hulled, 126-gross ton,
 70.8- foot long fishing vessel, her engines,
 tackle, furniture, apparel, etc., *in rem*, and
 Does 1-10,

18 Defendants.

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1 3. Venue is proper in this Court because the Defendant Vessel is physically
 2 located within the Northern District of California, the *in personam* Defendants, the
 3 COHENs, currently reside within the state of California, and both the Promissory Note and
 4 the Ship Mortgage which are the subject of this action were entered into by Defendants in
 5 the state of California.

6 4. Plaintiff DEL MAR is a California corporation, duly organized and existing
 7 according to law and doing business within this District.

8 5. Defendant BARRY COHEN is an individual and, upon information and
 9 belief, was at all relevant times a resident within this District.

10 6. Defendant CHRIS COHEN (aka CHRISTENE COHEN, referred to
 11 hereinafter as "CHRIS COHEN") is an individual and, upon information and
 12 belief, was at all relevant times a resident within this District.

13 7. At all relevant times, Defendants represented that they were the owners of
 14 the Defendant Vessel, the F/V POINT LOMA, Official Number 515298, a 1968 steel-hulled,
 15 126-gross ton, 70.8- foot long fishing vessel, her engines, masts, anchors, cables, chains,
 16 rigging, tackle, apparel, furniture and all appurtenances and necessities thereto appertaining
 17 (the "Vessel").

18 8. Does 1 through 10 inclusive, are unknown to DEL MAR, which therefore
 19 sues said defendants by such fictitious names. DEL MAR will request leave of Court to
 20 amend this complaint to allege their true names and capacities when ascertained. DEL MAR
 21 is informed and believes that some or all of Defendants are the agents, servants, employees,
 22 partners, alter egos, or representatives of other Defendants and performed the acts
 23 mentioned in this Complaint during the course and scope of their agency, servitude,
 24 employment, partnership, alter ego, or representative relationship or under the direction or
 25 with knowledge and approval of their principals, masters, employers and partners.

26 9. On or about October 31, 2003, Defendants, BARRY COHEN and CHRIS
 27 COHEN (hereinafter collectively referred to as "the COHENs") agreed to and executed a
 28 Promissory Note in favor of DEL MAR (which Promissory Note is hereinafter referred to as

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DelMarSeafoods/204

1 "the Note"). A copy of the Note is attached hereto as Exhibit A and is hereby fully
 2 incorporated herein by this reference.

3 10. Under the terms of the Note, the COHENs initially owed DEL MAR the
 4 sum of TWO HUNDRED AND FIFTEEN THOUSAND DOLLARS (\$215,000.00). The
 5 COHENs also agreed that the amount they owed DEL MAR would accrue interest on the
 6 unpaid balance at seven (7) percent. The COHENs also agreed to make monthly payments
 7 on the Note to DEL MAR in the amount of THREE THOUSAND DOLLARS (\$3,000.00)
 8 or fifteen (15) percent of the gross landing receipts of each and every seafood product
 9 caught by the Vessel, whichever is greater. The COHENs also agreed that all such
 10 payments made would be applied to interest first, then to principal. *See Exhibit A, page 1*

11 11. On or about October 31, 2003, in order to secure payment of the
 12 indebtedness of the Note, the COHENs executed and delivered to Plaintiff, in accordance
 13 with and pursuant to the laws of the United States, a Preferred Ship Mortgage covering the
 14 Vessel (the "Mortgage"), and by the terms of the Mortgage; assigned and mortgaged the
 15 Vessel to Plaintiff DEL MAR to secure payment of the indebtedness of the Note. A true
 16 and correct copy of the Mortgage is attached to this Complaint as Exhibit B and by
 17 reference is incorporated herein as though fully set forth.

18 12. The Note specifically referred to and incorporated by reference the terms of
 19 the Mortgage. *See Exhibit A, page 1.*

20 13. The Note also provided that "If suit is commenced on this note, maker shall
 21 pay to holder a reasonable attorney's fee and all costs." *See Exhibit A, page 2.*

22 14. The Mortgage provides for recovery of attorney's fees and costs upon
 23 default, as well as interest of ten (10) percent upon default. *See Exhibit B, page 6.*

24 15. As of May 1, 2007, the total amount due and owing under the Agreement
 25 was \$180,653.98, no portion of which has been paid.

26 16. Interest continues to accrue under the Note and the Mortgage at the rate of
 27 \$49.49 per day, at the rate of ten (10) per cent interest since default.

28 17. The Vessel is afloat upon the navigable waters of these United States, and

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DelMarSeafoods/2504

I || within this Judicial District and the Court's Jurisdiction.

**FIRST CLAIM FOR RELIEF – BREACH OF PROMISSORY NOTE AND
PREFERRED SHIP'S MORTGAGE IN PERSONAM AGAINST
DEFENDANTS BARRY COHEN, CHRIS COHEN, AND DOES 1-10**

5 18. Plaintiff DEL MAR hereby realleges and incorporates by this reference
6 paragraphs 1-17 of this Complaint.

7 19. On or about April 20, 2004, Plaintiff DEL MAR caused the Mortgage to be
8 duly recorded with the National Vessel Documentation Center, U.S. Coast Guard. Plaintiff
9 DEL MAR has not waived its status as a mortgagee under the Mortgage. All other
10 requirements of the laws of the United States relating to preferred ship mortgages were duly
11 met or were caused to be met by DEL MAR. The indebtedness of the Note, as secured by
12 the Mortgage on the Vessel, is a valid preferred ship mortgage lien on the Vessel.

13 20. Prior to, and as of, May 1, 2007, the COHENs repeatedly failed to make the
14 proper monthly payments as required under the Note and Mortgage. As of the last payment
15 on April 25, 2007, the COHENs were still in arrears on the required payments. Since April
16 25, 2007, the COHENs have not made any subsequent payments, as required under the
17 Note and Mortgage. Consequently, under the terms of the Note and the Mortgage, the
18 COHENs are in default under the terms of the Note and the Mortgage, and have been since
19 at least May 1, 2007.

20 21. Under the terms of the Note and the Mortgage, the total principal balance is
21 \$180,653.98 as of May 1, 2007.

22 22. Interest continues to accrue on the amounts presently owed to DEL MAR
23 under the Note and the Mortgage at the rate of ten (10) percent per annum from the date of
24 default at the rate of \$49.49 per day.

25 23. Plaintiff DEL MAR has a maritime lien upon and against the Vessel,
26 pursuant to 46 U.S.C. Section 31341, for the full amount it is owed under the Note and
27 Mortgage, plus interest thereon at the rate of \$49.49 per day from the date of default
28 through the date of judgment.

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DelMarSeaFood 1/2504

1 24. Plaintiff DEL MAR is also entitled to attorney's fees and costs based on the
 2 Note.

3 **SECOND CLAIM FOR RELIEF – FORECLOSURE OF PREFERRED**
 4 **SHIP'S MORTGAGE PURSUANT TO 46 U.S.C. SECTION 31325 AGAINST**
 5 **ALL DEFENDANTS, IN PERSONAM, AND THE VESSEL IN REM**

6 25. Plaintiff DEL MAR hereby realleges and incorporates by this reference
 7 paragraphs 1-24 of this Complaint

8 26. Plaintiff DEL MAR has a maritime lien against the Vessel, *in rem*, for any
 9 and all amounts that are or will be due and owing under the Note and Mortgage, including
 10 prejudgment interest at the agreed rate in the Mortgage of ten (10) percent (see Exhibit B at
 11 pages 5 and 6); and Plaintiff DEL MAR is entitled to foreclose its maritime lien and satisfy
 12 any and all obligations arising under the Note and Mortgage and during the course of the
 13 instant action, including the attorney's fees and costs based on the Note and Mortgage,
 14 including the costs of bringing this action, and arresting, preserving and selling the Vessel,
 15 against the Vessel *in rem*.

16 27. In view of the foregoing, Plaintiff DEL MAR is entitled to foreclose its
 17 maritime lien and the Mortgage satisfy any and all obligations arising under the maritime
 18 lien and Mortgage during the course of the instant action; and the costs of bringing this
 19 action, and arresting, preserving and selling the Vessel, against the Vessel *in rem*.

20 **WHEREFORE, Plaintiff DEL MAR prays as To All Claims For Relief Against**
 21 **All Defendants:**

22 1. That process in due form of law pursuant to this Court's Admiralty and
 23 Maritime Jurisdiction, *i.e.* a Warrant of Arrest, issue against the F/V POINT LOMA
 24 (Official No. 515298), her rigging, tackle apparel, furniture, engines, bunkers, and all other
 25 necessaries thereunto appertaining and belonging (the "Vessel"), that all persons claiming
 26 any interest in the Vessel be cited to appear and answer this Verified *in rem* Complaint; and
 27 that Defendants, the COHENs, be cited to appear and answer this Verified Complaint *in*
 28 *personam*;

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1 2. That the Vessel be arrested and preserved pursuant to the practice of this
 2 Court in cases involving maritime liens and Preferred Ships Mortgages against vessels in
 3 navigation, as provided by the Supplemental Admiralty Rules of the Federal Rules of Civil
 4 Procedure and the Rules of this Court;

5 3. That the Court direct and prescribe the manner in which actual notice of the
 6 commencement of this suit shall be given by Plaintiff DEL MAR pursuant to 46 U.S.C.
 7 Section 31301 *et seq.* and the Rules of this Court;

8 4. That the Mortgage and the statutory lien arising therefrom be declared valid
 9 against the Vessel in the sum of \$180,653.98 in principal, plus all unpaid accrued interest
 10 and late charges owing on the Promissory Note, together with all other amounts which have
 11 been or are required to be disbursed by or on behalf of Plaintiff for the care, insuring,
 12 preservation, movement, and storage of the Vessel while in *custodia legis* herein, plus all
 13 other advances, expenses, attorneys' fees, costs and disbursements by Plaintiff, together
 14 with post-judgment interest at the maximum statutory rate, with such liens to be prior and
 15 superior to the interest, of maritime and non-maritime liens or claims of any and all persons,
 16 firms or corporations whatsoever;

17 5. That the Court enter judgment in Plaintiff's favor for the full amount of
 18 Defendant's breach of Note and Preferred Ship Mortgage claims and maritime lien claims,
 19 in the amount of \$180,653.98, plus interest accrued since May 1, 2007 of \$1,831.13 for a
 20 total of \$182,485.11, plus other interest as allowed by law, attorney's fees, and costs against
 21 Defendants BARRY COHEN, CHRIS COHEN and all other defendants who may appear,
 22 and the Vessel;

23 6. That the Vessel be condemned and sold pursuant to the practices of this
 24 Court sitting in admiralty and that Plaintiff DEL MAR's claims be paid from the funds
 25 realized at such sale;

26 7. That all attorney's fees and costs based on the Note and Mortgage for
 27 arresting, preserving, and selling the Vessel be included in the funds to be paid Plaintiff
 28 DEL MAR realized at the sale of the Vessel;

COX WOOTTON,

GRIFFIN, HANSEN

& POULOS LLP

190 THE EMBARCADERO

SAN FRANCISCO, CA

94105

TEL 415-438-4600

FAX 415-438-4601

DelMarSeafoods/2164

1 8. That a judgment against BARRY COHEN, CHRIS COHEN and DOES 1-10,
 2 *in personam* be entered for any deficiency resulting after the judicial sale of the vessel;

3 9. That it be decreed that any and all persons, firms or corporations claiming
 4 any interest in the Vessel are forever barred and foreclosed of and from all right or equity of
 5 redemption or claim of, in, or to the mortgaged Vessel and every part thereof;

6 10. That the Court provide such other and further relief in Plaintiff DEL MAR's
 7 favor as the Court deems just and proper.

8 **As To Plaintiff DEL MAR's Claims For Relief Against All Defendants *in personam***
 9 **and *in rem*:**

10 1. That the Court award Plaintiff DEL MAR its reasonable attorney's fees and
 11 costs pursuant to the Note and Mortgage.

12 Dated: June 7, 2007

COX, WOOTTON, GRIFFIN,
 HANSEN & POULOS, LLP
 Attorneys for Plaintiff
 DEL MAR SEAFOODS, INC.

16 By: Max L. Kelley
 17 Max L. Kelley

26 COX, WOOTTON,
 GRIFFIN, HANSEN
 & POULOS LLP

27 190 TIDY IMBARCADERO
 SAN FRANCISCO, CA
 94105
 TEL 415-428-4600
 FAX 415-428-4601

28 DelMarSeafoods/2554

From: 14361471 Page: 14/14 Date: 6/6/2007 6:00 PM
05/17/2007 15:00 DEL MAR SEAFOODS INC WATSONVILLE → 17144361471

NO. 631 7502

VERIFICATION

I, JOE ROGGIO, hereby state:

1. I am an officer of DEL MAR SEAFOODS, INC., Plaintiff in the instant action.
 2. I have read the contents of the above Complaint and hereby verify the facts contained therein are true and correct to the best of my knowledge, information and belief.
 3. I am authorized on behalf of DEL MAR SEAFOODS, INC. to verify this Complaint.

9 I declare under penalty of perjury under the laws of the State of California and
10 the United States that the forgoing is true and correct and that this verification was
11 executed at Watsonville, California on May 16, 2007.

Joe Roggio
JOE ROGGIO

EXHIBIT A

From 44361471 Date: 6/5/2007 6:18 PM
05/15/2007 11:55 5622162960

Page: 15/15

RICHARD P WAGNER

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COPYFEDERAL VESSEL DOCUMENTATION OF
USCG RECEIVED/RULEDPROMISSORY NOTE

20 APR '04

10 : 08 ,

RECORDED: BOOK

PAGE

DOCUMENTATION OFFICE

For the value received, BARRY COHEN and CHRIS COHEN, an individual of 2028 Draydon Avenue, Cambria, California 93428, hereinafter referred to as maker, promises to pay to the order of DEL MAR SEAFOODS, INC., 331 Ford Street, Watsonville, California 95076, its successors and assigns, hereinafter referred to as holder, the sum of two hundred fifteen thousand (\$215,000.00) dollars at the rate of seven (7) percent per annum, as follows:

Monthly payments of \$3,000.00 or fifteen (15) percent of the gross landing receipts of each and every landing of seafood product made by the fishing vessel POINT LOMA, whichever is greater, commencing on January 2003 and on the 15th day of each succeeding month until principal and interest are fully paid. Payments are to be applied to interest first.

1. This promissory note is secured by a First Preferred Ship Mortgage on the vessel POINT LOMA, Official No. 55196 dated 10/31/03.

2. Incorporation of Terms of First Preferred Mortgage.

This note is secured by a continuing security interest in the vessel described in a Preferred Mortgage, dated 10/31/03, executed by maker in favor of holder. The terms of that Preferred Mortgage are incorporated into this note by reference to the same effect as if set forth in this note in their entirety. On default, under Preferred Mortgage or under this note, holder may exercise any of the remedies granted by the Preferred Mortgage. Maker acknowledges that holder rights are cumulative.

3. Acceleration of Maturity.

In the event of default, in the payment of any of the installments or interest due as provided in this

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05/16/2007 11:55 562212360 RICHARD P WAGNER
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note, time being of the essence, holder may, without notice or demand, declare the entire principal sum then unpaid immediately due and payable. Further, if maker should at any time fail in business or become insolvent, or commit an act of bankruptcy, or if any writ of execution, garnishment, attachment, or other legal process is issued against any deposit account or other property of maker, or if any assessment for taxes against maker, other than taxes on real property, is made by the federal or state government, or any department or agency of the federal or state government, or if maker fails to notify holder of any material change in their financial condition, all of the obligations of maker shall, at option of holder, become due and payable immediately without demand or notice.

4. Modification of Terms.

Holder may, with or without notice to maker, cause additional parties to be added to this note, or release any party, or revise, extend, or renew the note, or extend the time for making any installment provided for in this note, or accept any installment in advance, all without affecting the liability of maker.

5. Attorney's Fees.

If suit is commenced on this note, maker shall pay to holder a reasonable attorney's fee and all costs.

6. Waiver of Rights by Maker.

Maker hereby waives (a) presentment, demand, protest, notice of dishonor and/or protest, and notice of non-payment; (b) the right, if any, to the benefit of, or to direct the application of, any security hypothesized to holder until all indebtedness of maker to holder, however arising, shall have been paid; and (c) the right to require holder to proceed against any party to this note, or to pursue any other remedy in holder power. Holder may proceed against maker directly and independently of any other party to this note, and the cessation of the liability of any other party or

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05/15/2007 11:56 5622162968 RICHARD P WAGNER
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any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release, or substitution of security, or any impairment or suspension of holder's remedies or rights against any other party, shall not in any way affect the liability of maker.

DATED: 6/5/07

Barry Cohen
Barry Cohen

Chris Cohen
Chris Cohen

EXHIBIT B

From: 361471 Page: 4/14 Date: 6/5/2007 6:53: 2PM
 06/15/2007 11:55 5622162960 RICHARD P WAGNER

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COPY**FIRST PREFERRED MORTGAGE**

NATIONAL VESSEL DOCUMENTATION CENTER

RECEIVED/FILED

Official No: 515228

20 APR '04 * 10 8 08 AM

On the vessel:
POINT LOMARECORDED, BOOK 0470 PAGE 497Dated: 10/21/03

DOCUMENTATION CENTER

Amount of Mortgage \$215,000.00

and made by BARRY COHEN And CHRIS COHEN a married couple
(Hereinafter called "Owner")**WITNESSETH**

Whereas, the maker, Mortgagor herein, is the sole owner of the whole of the vessel
 (if more than one vessel is mortgaged hereunder, the term vessel means each such vessel)
 hereinafter named and described, and is justly indebted to the Mortgagee, as evidenced by the
 promissory note dated 10/21/03 in the principal amount of \$215,000.00, payable to the order
 of Mortgagee as follows:

Per the Attached Promissory Note which shall become a part of this mortgage.
**THE TOTAL AMOUNT OF THIS MORTGAGE IS TWO HUNDRED FIFTEEN THOUSAND
 DOLLARS AND PERFORMANCE OF MORTGAGE COVENANTS.**

And has agreed to give this Mortgage as security, and has authorized and directed the
 execution and delivery hereof.

NOW, THEREFORE, in consideration of the premises and for other good and
 valuable considerations, receipt of all of which is hereby acknowledged and to secure payment of
 said indebtedness and interest and other sums that hereafter may become due pursuant hereto and
 the performance of all covenants hereof. Owner by these presents mortgages and conveys unto
 Mortgagee, its successors and assigns, the whole of the Vessel named below and further
 described in her (their) last marine document(s) issued and identified as follows:

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Name: POINT LOMA

Home Port: Avila Beach, California

Official Number: 515298

Together, with all masts, booms, cables, engines, machinery, bowsprits, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, equipment and supplies, and fishing and all other appurtenances and accessories and additions, improvements and replacements now or hereafter belonging thereto, whether or not removed there from, all of which shall be deemed to be included in the term "vessel" herein, and said document(s) being deemed included herein by reference;

TO HAVE AND TO HOLD all singular the above described vessel unto Mortgagee, its successors and assigns, forever;

PROVIDED, HOWEVER, that if Owner, his heirs, executors, administrators or its successors or assigns shall perform and observe all and singular the terms, covenants and agreements herein, then this Mortgage shall cease, otherwise to remain in full force and effect.

Nothing herein shall be deemed or construed to subject the lien hereof any property other than a vessel as the term issued in Title 46, Chapter 313, and Section 31322 of the United States Code. Owner agrees to pay said indebtedness with interest thereon as herein and in said note provided, and to perform and observe the further terms, covenants and agreements herein, and to hold the vessel subject thereto.

ARTICLE I - PARTICULAR COVENANTS OF OWNER

Owner Covenants as follows:

1. Owner is and shall continue to be a citizen of the United States entitled to own and operate said vessel under her marine document, which Owner shall maintain in full force and effect; and all action necessary for the execution, delivery and validity hereof and of the

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05/15/2007 11:55 5622152950 RICHARD P WAGNER PAGE 18/20

good faith affidavit filed herewith and of said note has been taken. If a corporation, Owner is duly organized and is and shall continue in good standing under the laws of the State of NOT APPLICABLE and authorized to do business and in good standing in any other State wherein Owner regularly does business.

2. Owner lawfully owns and possesses the vessel free from all liens and encumbrances whatsoever except as may herein below be specified and shall warrant and defend title to and possession of all and every part thereof for the benefit of Mortgagors against all persons whomsoever. Owner shall not set up against Mortgagee of this mortgage any claim of Owner against Mortgagee and/or assignee under any past or future transaction.
3. Owner shall at his (its) own expense, keep the vessel fully and adequately insured under usual full marine insurance with policy valuation not exceeding the amount insured and, in the aggregate as to all vessels mortgaged herein, in at least the amount of the unpaid principal balance of this Mortgage, and shall maintain insurance to cover protection and indemnity risks, terrors liability risks if the vessel performs towage, employees compensation and other risks and liabilities from time to time specified by Mortgagee. All insurance shall be taken out in the name of Owner and shall by its terms be payable to Mortgage for account of Mortgage and Owner as their respective interests may appear, and all policy forms, underwriters and amounts shall be subject to Mortgagee's approval. Owner shall notify, and shall request underwriters to agree reasonably in advance to notify Mortgagee of any cancellation of or material change in any insurance coverage. All policies, binders and cover notes shall be delivered to Mortgagee with evidence satisfactory to it that all premiums and other charges therefore have been fully paid. Owner shall maintain all such insurance unimpaired by any act, breach or warranty or otherwise.
4. Owner shall comply with and not permit the vessel to be operated contrary to any provision of the law, treaties, conventions, rules, regulations or orders of the United States, any State and/or any other jurisdiction wherein operated, and/or of any department or agency thereof.

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nor remove the vessel from the limits of the United States save on voyages with the intent of returning, nor abandon the vessel in any foreign port. Owner shall do everything necessary to, establish and maintain this Mortgage as First Preferred Mortgage on said vessel.

5. Neither the Owner, Agent nor Master of the vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed on the vessel or any part thereof any lien whatsoever other than to the Mortgagor or for crew's wages or salvage.

6. Owner shall place and keep prominently in the pilot house (if any), chart room or Master's cabin or elsewhere on the vessel as specified by Mortgagor any notice of this Mortgage required by Mortgagor, and shall keep proper copy hereof with the ship's papers and exhibit the same to all persons having business with the vessel, and to Mortgagor on demand.

7. Owner shall pay when due all taxes, assessments, government charges, fines and penalties lawfully imposed and promptly discharge any and all liens whatsoever upon vessel. Owner shall at his (its) own expense at all times maintain the vessel in thorough repair and working order and shall make all proper renewals and replacements.

8. If the vessel shall be libeled, attached, detained, seized or levied upon or taken into custody under process or under color of any authority, Owner shall forthwith notify Mortgagor by telegram, confirmed by letter, and forthwith discharge or release the vessel therefrom and in any event within fifteen (15) days after such attachment, detention, seizure, levy or taking into custody.

9. Owner shall at all times afford Mortgagor complete opportunity to inspect the vessel and cargoes and papers thereof, and to examine Owners related accounts and records; and shall certify quarterly and, if Mortgagor requests, monthly, that all wages and all other claims whatsoever which might have given rise to a lien upon the vessel have been paid.

10. Owner shall not, without prior written consent of Mortgagor, sell or mortgage the vessel or any interest therein nor charter her except to persons and for uses lawful for American vessels and then only provided said insurance be unaffected thereby or adequately replaced; nor,

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if a corporation, to merge or consolidate with any other person, firm or corporation, or dissolve.

11. From time to time Owner shall execute and deliver such other and further instruments and assurance as in the opinion of Mortgagee's counsel may be required to subject to vessel more effectual to the lien hereof and to the payment of said indebtedness and for operation of the vessel as herein provided, and to effectuate sales as provided in paragraph (C) of Section 1 of Article 11.

ARTICLE II - DEFAULT

1. In any one or more of the following events, herein termed events of default:

(a) Default in the punctual payment of the principal of the note secured hereby or any installment thereof, or in the due and punctual performance of any provision of Sections 3, 4, 5, 6, 8 and 10 or Article I hereof, or attempt to violate Sections 4 or 10 of Article I hereof, or default continuing for fifteen (15) days in performance of any other covenant herein; or

(b) Commission of any act of bankruptcy by Owner or approval by any court of a petition or answer asking for reorganization, arrangement, extension or other relief under any bankruptcy law; or to appointment of a receiver for Owner or any of Owner's property or the taking by any court of any action comparable thereto; or rendition of a final judgment against Owner for the payment of money and failure of Owner to discharge the same within ninety (90) days or stay the execution thereof pending appeal; or Mortgagee's conclusion in good faith at any time that, through actual or prospective impairment of Owner's net current asset position, net worth, asset-liability ratio, or earning, or through prospective violation of any provision of this Mortgage, Mortgagee is in danger of losing said debt, or any part thereof, by delaying collecting thereof until the time above limited for the payment thereof, then, and in every such case, Mortgagee may:

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- (a) Declare the principal of said note and all accrued interest thereon to be and they shall then become and be due and payable forthwith, after which they shall bear interest at the rate of 10% per annum;
- (b) Recover judgment for, and collect out of any property of Owner, any amount thereby or otherwise due hereunder; and/or collect all earned charter hire and freight monies relating to services performed by the vessel, Owner hereby assigning to Mortgagee such earned charter hire and freight monies then owing; and/or
- (c) Retake the vessel without legal process at any time wherever the same may be, and, without being responsible for loss or damage, hold and in Mortgagee's or in Owner's name lease, charter, operate or otherwise use the vessel for such time and on such terms as Mortgagee may deem advisable, being accountable for net profits, if any, and with the right to dock the vessel free of charge at the Owner's premises or elsewhere at Owner's expense; and/or sell the vessel, free from any claim by Owner of any nature whatsoever, in the manner provided by the law; to the extent permitted by law, such sale may be public or private, without notice, without having the vessel present, and/or Mortgagee may become the purchaser.

For such purpose Mortgagee and its agents are hereby irrevocably appointed the true and lawful attorneys of Owner in his (its) name and stead to make all necessary transfers of the vessel thus sold.

2. In the event that the vessel shall be arrested or detained by any officer of any court or by any other authority, Owner hereby authorizes Mortgagee, its officers, representatives and appointees, in the name of the Owner or of Mortgagee, to receive or to take possession thereof, and to defend any action and/or discharge any lien.

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3. Each and every power or remedy herein given to Mortgagee shall be cumulative, and in addition to all powers or remedies now or hereafter existing in admiralty, in equity, at law or by statute, and may be exercised as often as may be deemed expedient by Mortgagee. No delay or omission by Mortgagee shall impair any right, power, or remedy, and no waiver of any default shall waive any other default. In any suit Mortgagee shall be entitled to obtain appointment of a receiver of the vessel and the earnings thereof, who shall have full rights and powers to use and operate the vessel, and to obtain a decree ordering and directing the sale and disposition thereof.

4. The net proceeds of any judicial or other sale, and any charter, management, operation or other use of the vessel by Mortgagee, of any claim for damages, of any judgment, and any insurance received by Mortgagee (except to the extent paid to Owner or applied in payment of repairs or otherwise for Owner's benefit) shall be applied as follows:

FIRST: To the payment of all attorneys fees, court costs, and any other expenses, losses, charges, damages incurred or advances made by Mortgagee in the protection of its rights or caused by Owner's default hereunder or under the note secured hereby, with interest on all such amounts at the rate of 10% per annum; and to provide adequate indemnity against any liens for which priority over this Mortgage is claimed;

SECOND: To the payment of all interest, to date of payment, on the note and any or all other sums secured hereby, and as to any balance of such proceeds, to the payment of next of any or all matured installments of principal and then of any or all un-matured installments of principal in the inverse order of this maturity.

Mortgagee shall be entitled to collect any deficiency from Owner. Owner shall be entitled to any surplus, subject to set-off in favor of Mortgagee for any other indebtedness of Owner.

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5. All advances and expenditures which Mortgagee in its discretion may make any repairs, insurance, payment of liens or other claims, defense of suit, or for any other purpose whatsoever related hereto or said note and all damages sustained by Mortgagee because of defaults, shall be repaid by Owner on demand with interest at 10% per annum, and until so paid shall be a debt due from Owner to Mortgagee secured by the lien thereof. Mortgagee shall not be obligated to make any such advances or expenditures, nor shall the making thereof relieve Owner of any obligation or default with respect thereto.

ARTICLE III - POSSESSION UNTIL DEFAULT

Until one or more of the events of default hereinbefore described, Owner shall be permitted to obtain actual possession and use of the vessel.

ARTICLE IV - SUNDRY PROVISIONS

All covenants and agreements of Owner herein contained shall bind Owner, his heirs, executors, administrators and assigns, or its successors and assigns, shall inure to the benefit of Mortgagee and its successors and assigns. Following any assignments hereof, any reference herein of "Mortgagee" shall be deemed to refer to the assignee. If one or more person is the Owner herein, "his" shall mean "their".

FUTURE ADVANCES. This mortgage is executed for the purpose of securing not only the payment of the above described note but also to secure all future advances made by the holder of said note to the mortgagor; and said mortgage shall remain in full force and effect to secure all future advances and all renewals or extensions of the above described note.

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IN WITNESS WHEREOF, on the day and year above written, Owner has executed this Mortgage, or if a corporation, has caused this Mortgage to be executed in its name and its corporate seal to be affixed hereto by its proper officers thereunto duly authorized or as required by State law.

Barry S. Cohen
Chris J. Cohen

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

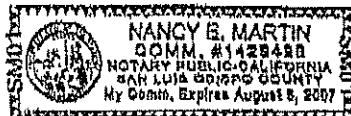
State of California

County of San Luis Obispo

On 10-31-03 before me, Nancy E. Martin, Notary Public, personally appeared Christette Layne Cohen and Barry A. Cohen,

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Nancy E. Martin*
Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- Individual
- Corporate Officer

DESCRIPTION OF ATTACHED DOCUMENT

First Preferred Mortgage

Title

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

- Limited
- General

11 plus attached acknowledgment

Number of Pages

10-31-03

Date of Document

None

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

Exhibit 2

1 COX, WOOTTON, GRIFFIN,
 2 HANSEN & POULOS LLP JUN 7 AM 11:01
 3 Gregory W. Poulos (SBN 131428)
 4 Max L. Kelley (SBN 205942) NORTHERN DISTRICT OF CALIFORNIA
 5 190 The Embarcadero SAN FRANCISCO, CA 94105
 6 Telephone No.: 415-438-4600
 7 Facsimile No.: 415-438-4601

8 Attorneys for Plaintiff
 9 DEL MAR SEAFOODS, INC.

FILED
 E-filing

RECEIVED

JUN - 7 2007

RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 Case No.: C 07 WHA 2952
 14 Plaintiff, Amended
 15 vs.
 16 BARRY COHEN, CHRIS COHEN (aka PROPOSED ORDER ON
 17 CHRISTENE COHEN), *in personam* and PLAINTIFF DEL MAR SEAFOODS,
 18 F/V POINT LOMA, Official Number INC.'S EX PARTE APPLICATION
 19 515298, a 1968 steel-hulled, 126-gross ton,
 20 70.8- foot long fishing vessel, her engines,
 21 tackle, furniture, apparel, etc., *in rem*, and FOR APPOINTMENT OF
 22 Does 1-10, SUBSTITUTE CUSTODIAN IN LIEU
 23 Defendants. OF U.S. MARSHAL

24 Under the application by Plaintiff, DEL MAR SEAFOODS INC., for an Order
 25 appointing a substitute custodian in lieu of the U.S. Marshal in this case, and good cause
 26 appearing therefore, it is hereby:

27 ORDERED that Plaintiff's Application is granted;

28 IT IS FURTHER ORDERED that the U.S. Marshal for this District transfer custody
 29 of the defendant vessel F/V POINT LOMA, Official Number 515298, a 1968 steel-hulled,
 30 126-gross ton, 70.8- foot long fishing vessel, her engines, tackle, furniture, apparel, (the
 31 "Vessel") in or near the navigable waters of San Francisco, or wherever said vessel may be

32 ///

COX, WOOTTON,
 33 GRIFFIN, HANSEN
 & POULOS LLP

34 190 EMBARCADERO
 SAN FRANCISCO, CA
 94105
 TEL 415-438-4600
 FAX 415-438-4601

35 DelMarSeafoods1504

36 ORDER FOR SUBSTITUTE CUSTODIAN

37 ORIGINAL

National Maritime Services, Inc.

1 found in this District, to the custody of substitute custodian, by and through its authorized
2 representatives, immediately following its arrest;

3 IT IS FURTHER ORDERED that upon the transfer of said defendant Vessel to the
4 substitute custodian, such substitute custodian is hereby appointed to act as substitute
5 custodian of the vessel during *custodia legis* on behalf of this Court, in place and instead of
6 the U.S. Marshal, until further Order of this Court;

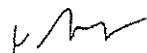
7 IT IS FURTHER ORDERED that upon transfer of custody of the defendant Vessel
8 to the substitute custodian by the U.S. Marshal, the U.S. Marshal shall not be liable for any
9 loss occurring while it remains in the custody of the substitute custodian;

10 IT IS FURTHER ORDERED that upon transfer of the vessel to the substitute
11 custodian, the substitute custodian may place a keeper on board the vessel at all times; and
12 that the substitute custodian will maintain sufficient insurance to protect the Vessel during
13 its custodianship.

14 IT IS FURTHER ORDERED that the fees and costs of the substitute custodian in
15 storing, maintaining, safekeeping, and insuring the vessel while in *custodia legis* shall be
16 taxed as costs of this action; and

17 IT IS FINALLY ORDERED that the U.S. Marshal will place a copy of this order on
18 board the defendant vessel.

19 DATED: June 7, 2007

20 
UNITED STATES DISTRICT JUDGE

21
22
23
24
25
COX, WOOTTON,
26 GRIFFIN, HANSEN
& POULOS LLP

27 190 THE EMBARCADERO
SAN FRANCISCO, CA
94103
TEL 415-438-4600
FAX 415-438-4601

28 DelMarSeaNotes2594

Exhibit 3

1
2
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5

IN THE UNITED STATES DISTRICT COURT

6
7
8
9

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

DEL MAR SEAFOODS INC.,

No. C 07-02952 WHA

11
12
13

Plaintiff,

**ORDER GRANTING MOTION TO
VACATE ORDER OF ARREST**

14
15
16

v.
BARRY COHEN, CHRIS COHEN (aka
CHRISTINE COHEN), *in personam* and, F/V
POINT LOMA, Official Number 515298, a
1968 steel-hulled, 126-gross ton, 70.8 foot long
fishing vessel, her engines, tackle, furniture
apparel, etc., *in rem*, and Does 1-10,

17

Defendants.

18

INTRODUCTION

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In this maritime action for breach of a promissory note, defendants move to vacate an order of arrest pursuant to Rule E(4)(f) of the Supplementary Admiralty Rules. Plaintiff has failed to establish probable cause for the order of arrest. Accordingly, defendants' motion to vacate the order of arrest is **GRANTED**.

24

STATEMENT

25
26
27
28

Plaintiff Del Mar Seafoods is a California corporation that owns fishing vessels and runs fish processing plants. Defendants Barry Cohen and Chris Cohen are individuals, married to one another, who reside in this district. At all relevant times, the Cohens represented that they

1 were the owners of defendant Vessel, the F/V POINT LOMA (Compl. ¶¶ 4–7; Cappuccio Decl.
2 ¶ 4).

3 In 1999, plaintiff and defendant Barry Cohen formed a joint venture for the purpose of
4 buying, processing, and selling fish from a site that Barry Cohen leased in Avila Beach,
5 California. Plaintiff advanced funds to Cohen as part of this venture. In 2003, following
6 plaintiff's decision not to continue with the partnership, plaintiff and defendants entered into a
7 promissory note secured by a ship mortgage. In the note, the parties agreed on a schedule for
8 defendants' repayment of the amount that had been advanced by plaintiff. Specifically,
9 defendants agreed to pay the following:

10 [T]he sum of two hundred fifteen thousand (\$215,000) dollars at
the rate of seven (7) percent per annum as follows:

11 Monthly payments of \$3,000.00 or fifteen (15) percent of the
12 gross landing receipts of each and every landing of seafood
13 product made by the fishing vessel POINT LOMA, whichever is
greater, commencing on January '04 and on the 15th day of each
14 succeeding month until principal and interest are fully paid.
Payments are to be applied to interest first.

15 (Cappuccio Decl. ¶¶ 8–11, Exh. A at 1; Cohen Decl. ¶¶ 4–5).

16 Plaintiff maintains that the total principal amount owed under the note increased to
17 \$295,429.53 by November 2004. The principal amount allegedly increased from \$215,000 due
18 to additional amounts owed by Cohen's sons, fuel advances, and additional information on the
19 original amount owed pursuant to an audit. Plaintiff contends that Barry Cohen agreed to
20 include these additional amounts with the amount owed under the note and mortgage.

21 Defendants deny such an agreement (Cappuccio Decl. ¶¶ 18–22; Cohen Decl. ¶ 12).

22 Between November 2004 and November 2005, plaintiff alleges that defendants paid a
23 total of \$7,474.75 on the note, all of which was applied to the accrued interest rather than to the
24 principal. During this period, defendants point to only one payment of \$5000, paid in
25 December 2004 (Cappuccio Decl. ¶¶ 22–23; Cohen Decl. ¶ 11). Defendants then paid \$175,000
26 in November 2005. Defendants made additional payments in January, February, and March of
27 2007 for a total of \$8000.

1 There is significant dispute between the parties as to the effect of the \$175,000 payment
2 in November 2005. Plaintiff maintains that this amount was credited first against the accrued
3 interest of \$30,359.83 and then \$145,940.17 was applied against the principal amount following
4 an inventory credit of \$1300. Plaintiff alleges that the principal balance was then \$149,489.36.
5 Defendants allege that the \$175,000 settled payments that were overdue at that point and
6 constituted a prepayment of monthly payments due under the note. In exchange for the advance
7 payment, defendants contend that plaintiff agreed to make the loan interest-free. Plaintiff
8 disputes agreeing to an interest-free loan (Cappuccio Decl. ¶¶ 26–28; Cohen Decl. ¶¶ 11–13).

9 The parties also disagree whether the value of the principal ever changed. Following the
10 \$175,000 payment, plaintiff maintains that \$30,095.01 was added to the principal on the note
11 due to advances to defendants as well as to cover attorney's fees in separate litigation.
12 Defendants maintain that the principal owed under the loan did not increase above the original
13 \$215,000.

14 The parties also dispute the effect of the \$8000 paid during January, February, and
15 March of 2007. Plaintiff maintains that these payments were applied to interest only. After
16 these payments, plaintiff contends that the total amount owed on the note as of June 14, 2007,
17 was \$189,374.54, including \$9,790.17 in accrued interest. Plaintiff thus alleges that defendants
18 continued to owe monthly payments and were in default for failure to make those payments.
19 Defendants maintain that because there was no interest on the loan, and the principal amount
20 never increased above \$215,000, the amount owed as of June 14 was \$27,000, which meant
21 they were current on the note through February 2009 (Cappuccio Decl. ¶¶ 36–38; Cohen Decl.
22 ¶¶ 14–15).

23 Plaintiff believes that defendants are in default. As a result of the alleged default,
24 plaintiff filed an *ex parte* application for arrest of the vessel on June 6, 2007. A warrant of
25 arrest was issued for the vessel on June 7, 2007, and the vessel was arrested by a United States
26 Marshal. This motion to vacate the order of arrest due to lack of subject-matter jurisdiction and
27 lack of probable cause for the order of arrest was filed on July 9, 2007.

ANALYSIS

1. LACK OF SUBJECT-MATTER JURISDICTION.

3 Defendants allege that this Court does not have subject-matter jurisdiction over the case
4 under maritime law. Defendants maintain that because, in their view, there was no breach of
5 the promissory note, plaintiff has no maritime cause of action and thus no basis for the order of
6 arrest. Defendants' contention is without merit. "Article III, § 2, cl.3 of the United States
7 Constitution extends the judicial power of the federal sovereign to 'all cases of admiralty and
8 maritime jurisdiction.'" *World Tanker Carriers Corp. v. M/V Ya Mawlayav*, 99 F.3d 717, 722
9 (5th Cir. 1997). Under 28 U.S.C. 1333, federal courts have authority over civil admiralty
10 disputes, "regardless of the existence of a federal statute creating the maritime right, diversity of
11 citizenship, or the minimum amount in controversy." *Id.* at 723. At issue here is the ship's
12 mortgage, which is a maritime contract over which the district courts of the United States have
13 original jurisdiction. Accordingly, this Court does have subject-matter jurisdiction.

2. PROBABLE CAUSE FOR ARREST.

Defendants contend that the order of arrest was improperly issued pursuant to Rule E(4)(f), which states as follows:

Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.

The purpose of this hearing is not “to resolve definitively the dispute between the parties, but only to make a preliminary determination whether there were reasonable grounds for issuing the arrest warrant.” *Lion de Mer v. M/V Loretta V*, 1998 WL 307077 at *2 (D. Md. Apr. 3, 1998) (Legg, J.). “At this stage in the proceedings, plaintiff merely needs to show ‘probable cause’ for the issuance of the warrant and writ.” *Continental v. Adriatic Tankers Shipping Co.*, 1995 WL 649942 (E.D. La. 1995) (McNamara, J.); see also *Greger Leasing Corp. v. Barge PT. Potrero*, 2006 WL 889537, at *1 (N.D. Cal. Apr. 5, 2006) (Conti, J.). This “probable cause”

1 requirement "translates roughly to requiring that plaintiff show entitlement to a maritime lien."
2 *Newport News Shipbuilding and Dry Dock Co. v. S.S. Independence*, 872 F. Supp. 262, 265
3 (E.D.Va.1994) (Doumar, J.).

4 A number of factual disputes exist, such as whether the principal amount owed pursuant
5 to the note increased above the original \$215,000 and whether plaintiff agreed to an interest-
6 free loan as a result of the \$175,000 payment in November 2005. The purpose of a Rule E(4)(f)
7 hearing, however, is not to resolve these factual disputes, but rather to assess whether plaintiff's
8 showing rises to the level of probable cause.

9 Plaintiff has failed to meet its burden of establishing probable cause because there is not
10 sufficient evidence that defendants were in default at the time the order of arrest was issued.
11 Under the note, defendants were to make monthly payments of the greater of "\$3,000.00 or
12 fifteen (15) percent of the gross landing receipts" (Cappuccio Decl. Exh. A). From January
13 2004 through May 15, 2007, the last payment date prior to the order of arrest, 41 monthly
14 payments should have been made on the note. At a rate of \$3000 per month, defendants should
15 have paid a total of \$123,000. From the time the promissory note went into effect in January
16 2004 until the time the boat was seized in June 2007, it is undisputed that defendants paid at
17 least \$188,000 to plaintiff. It is true that most of this amount — \$175,000 — was paid in a
18 lump sum in November 2005. But paying via lump sum prepayment rather than by monthly
19 payments does not mean defendants are in default.

20 Plaintiff fails to demonstrate that defendant at any point owed *more* than \$3000 per
21 month. Plaintiff makes no assertion that more is owed, for example, due to fifteen percent of
22 gross landing receipts being greater than the \$3000 for any month. Even if additional amounts
23 were due because of other advances or interest, the promissory note has no provision indicating
24 that payments would ever exceed the \$3000 or fifteen percent. Rather, the note indicates that
25 the payments are to continue according to the payment schedule "until principal and interest are
26 fully paid" (*ibid.*).
27

1 Plaintiff also fails to show that defendants were behind on the payment schedule at the
2 time of the arrest or that they were obligated to make monthly payments when defendants'
3 payments were actually *ahead* of schedule. Plaintiff asserts that the \$175,000 payment was
4 applied first to interest and then \$145,940.17 of it was applied to reduce the principal balance
5 on the note (Cappuccio Decl. ¶ 28). Even if only this \$145,940.17 had been paid toward the
6 note at the time of the order of arrest, this is more than would have been due at that time under a
7 \$3000 per month payment schedule. Plaintiff's mere assertion that monthly payments were still
8 owed at that point is not sufficient to establish probable cause. Defendants allege that they
9 understood the payment to be an advance on future payments. Common sense also suggests
10 that if a debtor pays more than is owed on a payment schedule, monthly payments should not be
11 required until there is no longer an excess.

12 Plaintiff has not presented any evidence that defendants owed more than \$3000 per
13 month pursuant to the note. They have also failed to establish that defendants were behind on
14 that \$3000 per month schedule or that they were obligated to make payments ahead of schedule.
15 Accordingly, while factual disputes remain, this order finds that plaintiff has not met its burden
16 of showing probable cause for the order of arrest. This order is without prejudice to plaintiff
17 proving its case at trial or on summary judgment.

18 CONCLUSION

19 For all of the above-stated reasons, defendants' motion to vacate the order of arrest is
20 GRANTED. Defendants are ORDERED not to sell, pledge, hypothecate, diminish the value of, or
21 take the vessel outside the jurisdiction. Defendants must also keep the vessel fully insured.
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1 Defendants' counsel agreed to these conditions at the hearing. Mr. Cohen was also present at
2 the hearing and agreed to these conditions.

3 **IT IS SO ORDERED.**

4
5 Dated: August 16, 2007.
6

7 
8 WILLIAM ALSUP
9 UNITED STATES DISTRICT JUDGE

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Exhibit 4

From 44361471
05/15/2007 11:55 5622162968

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RICHARD P WAGNER

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COPY**PROMISSORY NOTE**FEDERAL VESSEL DOCUMENTATION GE
USCG RECEIVED/RULED

20 APR '04

10 : 08 ,

RECORDED: BOOK

PAGE

DOCUMENTATION OFFICE

For the value received, BARRY COHEN and CHRIS COHEN, an individual of 2028 Draydon Avenue, Cambria, California 93428, hereinafter referred to as maker, promises to pay to the order of DEL MAR SEAFOODS, INC., 331 Ford Street, Watsonville, California 95076, its successors and assigns, hereinafter referred to as holder, the sum of two hundred fifteen thousand (\$215,000.00) dollars at the rate of seven (7) percent per annum, as follows:

Monthly payments of \$3,000.00 or fifteen (15) percent of the gross landing receipts of each and every landing of seafood product made by the fishing vessel POINT LOMA, whichever is greater, commencing on Tuesday 24nd on the 15th day of each succeeding month until principal and interest are fully paid. Payments are to be applied to interest first.

1. This promissory note is secured by a First Preferred Ship Mortgage on the vessel C.L.C. 515278 by, POINT LOMA, Official No. 5496; dated 10/31/03.

2. Incorporation of Terms of First Preferred Mortgage.

This note is secured by a continuing security interest in the vessel described in a Preferred Mortgage, dated 10/31/03, executed by maker in favor of holder. The terms of that Preferred Mortgage are incorporated into this note by reference to the same effect as if set forth in this note in their entirety. On default, under Preferred Mortgage or under this note, holder may exercise any of the remedies granted by the Preferred Mortgage. Maker acknowledges that holder rights are cumulative.

3. Acceleration of Maturity.

In the event of default, in the payment of any of the installments or interest due as provided in this

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note, time being of the essence, holder may, without notice or demand, declare the entire principal sum then unpaid immediately due and payable. Further, if maker should at any time fail in business or become insolvent, or commit an act of bankruptcy, or if any writ of execution, garnishment, attachment, or other legal process is issued against any deposit account or other property of maker, or if any assessment for taxes against maker, other than taxes on real property, is made by the federal or state government, or any department or agency of the federal or state government, or if maker fails to notify holder of any material change in their financial condition, all of the obligations of maker shall, at option of holder, become due and payable immediately without demand or notice.

4. Modification of Terms.

Holder may, with or without notice to maker, cause additional parties to be added to this note, or release any party, or revise, extend, or renew the note, or extend the time for making any installment provided for in this note, or accept any installment in advance, all without affecting the liability of maker.

5. Attorney's Fees.

If suit is commenced on this note, maker shall pay to holder a reasonable attorney's fee and all costs.

6. Waiver of Rights by Maker.

Maker hereby waives (a) presentment, demand, protest, notice of dishonor and/or protest, and notice of non-payment; (b) the right, if any, to the benefit of, or to direct the application of, any security hypothesized to holder until all indebtedness of maker to holder, however arising, shall have been paid; and (c) the right to require holder to proceed against any party to this note, or to pursue any other remedy in holder power. Holder may proceed against maker directly and independently of any other party to this note, and the cessation of the liability of any other party or

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any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release, or substitution of security, or any impairment or suspension of holder's remedies or rights against any other party, shall not in any way affect the liability of maker.

DATED: 6/5/07

Barry Cohen
Barry Cohen

Chris Cohen
Chris Cohen

Exhibit 5

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COPY**FIRST PREFERRED MORTGAGE**

NATIONAL VESSEL DOCUMENTATION CENTER

RECEIVED/FILED

Official No: 515 298

20 APR '04 10:08 AM

On the vessel:
POINT LOMARECORDED: BOOK 04-70 PAGE 497Dated: 10/31/03

DOCUMENTATION OFFICE

Amount of Mortgage \$215,000.00

and made by BARRY COHEN And CHERIS COHEN a married couple

(Hereinafter called "Owner")

WITNESSETH

Whereas, the maker, Mortgagor herein, is the sole owner of the whole of the vessel
 (if more than one vessel is mortgaged hereunder, the term vessel means each such vessel)
 hereinafter named and described, and is justly indebted to the Mortgagee, as evidenced by the
 promissory note dated 10/31/03 in the principal amount of \$215,000.00, payable to the order
 of Mortgagee as follows:

For the Attached Promissory Note which shall become a part of this mortgage.
**THE TOTAL AMOUNT OF THIS MORTGAGE IS TWO HUNDRED FIFTEEN THOUSAND
 DOLLARS AND PERFORMANCE OF MORTGAGE COVENANTS.**

And has agreed to give this Mortgage as security, and has authorized and directed the
 execution and delivery hereof.

NOW, THEREFORE, in consideration of the premises and for other good and
 valuable considerations, receipt of all of which is hereby acknowledged and to secure payment of
 said indebtedness and interest and other sums that hereafter may become due pursuant hereto and
 the performance of all covenants hereof. Owner by these presents mortgages and conveys unto
 Mortgagee, its successors and assigns, the whole of the Vessel named below and further
 described in her (their) last marine document(s) issued and identified as follows:

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Name: POINT LOMA
Home Port: Avila Beach, California
Official Number: 575298

Together, with all masts, booms, cables, engines, machinery, bowsprits, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, equipment and supplies, and fishing and all other appurtenances and accessories and additions, improvements and replacements now or hereafter belonging thereto, whether or not removed there from, all of which shall be deemed to be included in the term "vessel" herein, and said document(s) being deemed included herein by reference;

TO HAVE AND TO HOLD all singular the above described vessel unto Mortgagee, its successors and assigns, forever;

PROVIDED, HOWEVER, that if Owner, his heirs, executors, administrators or its successors or assigns shall perform and observe all and singular the terms, covenants and agreements herein, then this Mortgage shall cease, otherwise to remain in full force and effect.

Nothing herein shall be deemed or construed to subject the lien hereof any property other than a vessel as the term issued in Title 46, Chapter 313, and Section 31322 of the United States Code. Owner agrees to pay said indebtedness with interest thereon as herein and in said note provided, and to perform and observe the further terms, covenants and agreements herein, and to hold the vessel subject thereto.

ARTICLE I - PARTICULAR COVENANTS OF OWNER

Owner Covenants as follows:

1. Owner is and shall continue to be a citizen of the United States entitled to own and operate said vessel under her marine document, which Owner shall maintain in full force and effect; and all action necessary for the execution, delivery and validity hereof and of the

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good faith affidavit filed herewith and of said note has been taken. If a corporation, Owner is duly organized and is and shall continue in good standing under the laws of the State of NOT APPLICABLE and authorized to do business and in good standing in any other State wherein Owner regularly does business.

2. Owner lawfully owns and possesses the vessel free from all liens and encumbrances whatsoever except as may herein below be specified and shall warrant and defend title to and possession of all and every part thereof for the benefit of Mortgagee against all persons whomsoever. Owner shall not set up against Mortgagee of this mortgage any claim of Owner against Mortgagee and/or assignee under any past or future transaction.
3. Owner shall at his (its) own expense, keep the vessel fully and adequately insured under usual full marine insurance with policy valuation not exceeding the amount insured and, in the aggregate as to all vessels mortgaged herein, in at least the amount of the unpaid principal balance of this Mortgage, and shall maintain insurance to cover protection and indemnity risks, towers liability risks if the vessel performs towage, employees compensation and other risks and liabilities from time to time specified by Mortgagee. All insurance shall be taken out in the name of Owner and shall by its terms be payable to Mortgage for account of Mortgage and Owner as their respective interests may appear, and all policy forms, underwriters and amounts shall be subject to Mortgagee's approval. Owner shall notify, and shall request underwriters to agree reasonably in advance to notify Mortgagee of any cancellation of or material change in any insurance coverage. All policies, binders and cover notes shall be delivered to Mortgagee with evidence satisfactory to it that all premiums and other charges therefore have been fully paid. Owner shall maintain all such insurance unimpaired by any act, breach or warranty or otherwise.
4. Owner shall comply with and not permit the vessel to be operated contrary to any provision of the law, treaties, conventions, rules, regulations or orders of the United States, any State and/or any other jurisdiction wherein operated, and/or of any department or agency thereof.

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nor remove the vessel from the limits of the United States save on voyages with the intent of returning, nor abandon the vessel in any foreign port. Owner shall do everything necessary to establish and maintain this Mortgage as First Preferred Mortgage on said vessel.

5. Neither the Owner, Agent nor Master of the vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed on the vessel or any part thereof any lien whatsoever other than to the Mortgagor or for crew's wages or salvage.

6. Owner shall place and keep prominently in the pilot house (if any), chart room or Master's cabin or elsewhere on the vessel as specified by Mortgagor any notice of this Mortgage required by Mortgagors, and shall keep proper copy hereof with the ship's papers and exhibit the same to all persons having business with the vessel, and to Mortgagor on demand.

7. Owner shall pay when due all taxes, assessments, government charges, fines and penalties lawfully imposed and promptly discharge any and all liens whatsoever upon vessel. Owner shall at his (its) own expense at all times maintain the vessel in thorough repair and working order and shall make all proper renewals and replacements.

8. If the vessel shall be libeled, attached, detained, seized or levied upon or taken into custody under process or under color of any authority, Owner shall forthwith notify Mortgagor by telegram, confirmed by letter, and forthwith discharge or release the vessel therefrom and in any event within fifteen (15) days after such attachment, detention, seizure, levy or taking into custody.

9. Owner shall at all times afford Mortgagor complete opportunity to inspect the vessel and cargoes and papers thereof, and to examine Owners related accounts and records; and shall certify quarterly and, if Mortgagor requests, monthly, that all wages and all other claims whatsoever which might have given rise to a lien upon the vessel have been paid.

10. Owner shall not, without prior written consent of Mortgagor, sell or mortgage the vessel or any interest therein nor charter her except to persons and for uses lawful for American vessels and then only provided said insurance be unaffected thereby or adequately replaced; nor,

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if a corporation, to merge or consolidate with any other person, firm or corporation, or dissolve.

11. From time to time Owner shall execute and deliver such other and further instruments and assurance as in the opinion of Mortgagor's counsel may be required to subject to vessel more effectual to the lien hereof and to the payment of said indebtedness and for operation of the vessel as herein provided, and to effectuate sales as provided in paragraph (C) of Section 1 of Article 11.

ARTICLE II - DEFAULT

1. In any one or more of the following events, herein termed events of default:

(a) Default in the punctual payment of the principal of the note secured hereby or any installment thereof, or in the due and punctual performance of any provision of Sections 3, 4, 5, 6, 8 and 10 or Article I hereof, or attempt to violate Sections 4 or 10 of Article I hereof; or default continuing for fifteen (15) days in performance of any other covenant herein; or

(b) Commission of any act of bankruptcy by Owner or approval by any court of a petition or answer asking for reorganization, arrangement, extension or other relief under any bankruptcy law; or to appointment of a receiver for Owner or any of Owner's property or the taking by any court of any action comparable thereto; or rendition of a final judgment against Owner for the payment of money and failure of Owner to discharge the same within ninety (90) days or stay the execution thereof pending appeal; or Mortgagor's conclusion in good faith at any time that, through actual or prospective impairment of Owner's net current asset position, net worth, asset-liability ratio, or earning, or through prospective violation of any provision of this Mortgage, Mortgagor is in danger of losing said debt, or any part thereof, by delaying collecting thereof until the time above limited for the payment thereof; then, and in every such case, Mortgagor may:

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- (a) Declare the principal of said note and all accrued interest thereon to be and they shall then become and be due and payable forthwith, after which they shall bear interest at the rate of 10% per annum;
- (b) Recover judgment for, and collect out of any property of Owner, any amount thereby or otherwise due hereunder; and/or collect all earned charter hire and freight monies relating to services performed by the vessel, Owner hereby assigning to Mortgagor such earned charter hire and freight monies then owing; and/or
- (c) Retake the vessel without legal process at any time wherever the same may be, and, without being responsible for loss or damage, hold and in Mortgagor's or in Owner's name lease, charter, operate or otherwise use the vessel for such time and on such terms as Mortgagor may deem advisable, being accountable for net profits, if any, and with the right to dock the vessel free of charge at the Owner's premises or elsewhere at Owner's expense; and/or sell the vessel, free from any claim by Owner of any nature whatsoever, in the manner provided by the law; to the extent permitted by law, such sale may be public or private, without notice, without having the vessel present, and/or Mortgagor may become the purchaser.

For such purpose Mortgagor and its agents are hereby irrevocably appointed the true and lawful attorneys of Owner in his (its) name and stead to make all necessary transfers of the vessel thus sold.

2. In the event that the vessel shall be arrested or detained by any officer of any court or by any other authority, Owner hereby authorizes Mortgagor, its officers, representatives and appointees, in the name of the Owner or of Mortgagor, to receive or to take possession thereof, and to defend any action and/or discharge any lien.

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3. Each and every power or remedy herein given to Mortgagee shall be cumulative, and in addition to all powers or remedies now or hereafter existing in admiralty, in equity, at law or by statute, and may be exercised as often as may be deemed expedient by Mortgagee. No delay or omission by Mortgagee shall impair any right, power, or remedy, and no waiver of any default shall waive any other default. In any suit Mortgagee shall be entitled to obtain appointment of a receiver of the vessel and the earnings thereof, who shall have full rights and powers to use and operate the vessel, and to obtain a decree ordering and directing the sale and disposition thereof.

4. The net proceeds of any judicial or other sale, and any charter, management, operation or other use of the vessel by Mortgagee, of any claim for damages, of any judgment, and any insurance received by Mortgagee (except to the extent paid to Owner or applied in payment of repairs or otherwise for Owner's benefit) shall be applied as follows:

FIRST: To the payment of all attorneys fees, court costs, and any other expenses, losses, charges, damages incurred or advances made by Mortgagee in the protection of its rights or caused by Owner's default hereunder or under the note secured hereby, with interest on all such amounts at the rate of 10% per annum; and to provide adequate indemnity against any liens for which priority over this Mortgage is claimed;

SECOND: To the payment of all interest, to date of payment, on the note and any or all other sums secured hereby, and as to any balance of such proceeds, to the payment of next of any or all matured installments of principal and then of any or all un-matured installments of principal in the inverse order of this maturity.

Mortgagee shall be entitled to collect any deficiency from Owner. Owner shall be entitled to any surplus, subject to set-off in favor of Mortgagee for any other indebtedness of Owner.

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5. All advances and expenditures which Mortgagor in its discretion may make any repairs, insurance, payment of liens or other claims, defense of suit, or for any other purpose whatsoever related hereto or said note and all damages sustained by Mortgagor because of defaults, shall be repaid by Owner on demand with interest at 10% per annum, and until so paid shall be a debt due from Owner to Mortgagor secured by the lien thereof. Mortgagor shall not be obligated to make any such advances or expenditures, nor shall the making thereof relieve Owner of any obligation or default with respect thereto.

ARTICLE III - POSSESSION UNTIL DEFAULT

Until one or more of the events of default hereinbefore described, Owner shall be permitted to obtain actual possession and use of the vessel.

ARTICLE IV - SUNDRY PROVISIONS

All covenants and agreements of Owner herein contained shall bind Owner, his heirs, executors, administrators and assigns, or its successors and assigns, shall inure to the benefit of Mortgagor and its successors and assigns. Following any assignments hereof, any reference herein of "Mortgagor" shall be deemed to refer to the assignee. If one or more person is the Owner herein, "his" shall mean "their".

FUTURE ADVANCES. This mortgage is executed for the purpose of securing not only the payment of the above described note but also to secure all future advances made by the holder of said note to the mortgagor; and said mortgage shall remain in full force and effect to secure all future advances and all renewals or extensions of the above described note.

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IN WITNESS WHEREOF, on the day and year above written, Owner has executed this Mortgage, or if a corporation, has caused this Mortgage to be executed in its name and its corporate seal to be affixed hereto by its proper officers thereunto duly authorized or as required by State law.

Barry A. Cohen
Chris G. Cohen

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

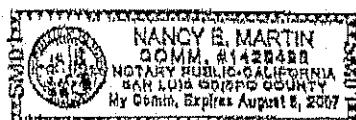
County of San Luis Obispo

On 10-31-03 before me, Nancy E. Martin, Notary Public, personally appeared Christene Layne Cohen and Barry A. Cohen,

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary



Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- Individual
- Corporate Officer

DESCRIPTION OF ATTACHED DOCUMENT

First Preferred Mortgage

Title or Type of Document

11 plus attached acknowledgment

Number of Pages

10-31-03

Date of Document

None

Title

- | | |
|---|---|
| <input type="checkbox"/> Partner(s) | <input type="checkbox"/> Limited |
| | <input checked="" type="checkbox"/> General |
| <input type="checkbox"/> Attorney-in-Fact | |
| <input type="checkbox"/> Trustee(s) | |
| <input type="checkbox"/> Guardian/Conservator | |
| <input type="checkbox"/> Other: | |

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--ooOo--

DEL MAR SEAFOODS, INC.,)
)
Plaintiff,)
)
vs.) NO. C-07-2952-WHA
)
BARRY COHEN, CHRIS COHEN (aka)
CHRISTENE COHEN), in personam)
and, F/V POINT LOMA, Official)
Number 515298, a 1968)
steel-hulled, 126-gross ton,)
70.8 foot long fishing vessel,)
her engines, tackle, furniture)
apparel, etc., in rem, and)
Does 1-10,)
)
Defendants.)
)

DEPOSITION OF
BARRY ALLEN COHEN

January 9, 2008

REPORTED BY: RITA R. LERNER, CSR #3179 (2001-404170)

1 A. Ever. 2 Q: How about Olde Port Fisheries, Inc.? 3 A. Yes. 4 Q. And what time period were you an owner of Olde 5 Port Fisheries, Inc.? 6 A. From its inception until today. 7 Q. When was Olde Port Fisheries, Inc., started? 8 A. In 2003 or 2004, to my best recollection. 9 Q. And you're an owner of the Point Loma Fishing 10 Company, Inc., correct? 11 A. Today? 12 Q. Yes. 13 A. Yes. 14 Q. And you have been since that company was 15 started; is that correct? 16 A. Correct. But that company is and has been part 17 of my fishing with that boat. I just had it 18 incorporated. 19 Q. How many corporations have you been -- well, 20 have you actually started and been a major shareholder 21 of? 22 A. One. 23 Q. The Point Loma Fishing Company, Inc.? 24 A. No. 25 Q. Well, then, that would be two. Did you start	14 1 A. A long time ago. I would have to guess, if you 2 want me to guess. 3 Q. Well, I'm fairly certain you know that 4 guessing, from having attended all these depositions, is 5 a word we don't like to use. 6 Let me give you the general instruction. I do 7 not want you to guess about anything. I am entitled to 8 and I want you to give me your best estimate, if you 9 have one, but don't just pull numbers out of thin air. 10 If you have an estimate, whether it be by year, month, 11 day or decade, even, I'm entitled to the best narrowing 12 down that you can give me. But if you're just picking 13 something out of thin air, that's guessing. Do you 14 understand that? 15 A. Yes. 16 Q. What's your best estimate of when Olde Port 17 Fish Company, Inc., was started? 18 A. In the 19 -- the end of the 1960s or the 1970s 19 or the early part of the 1980s. That's my best 20 recollection. I can't remember what year I went to a 21 corporation from just being the sole owner. 22 Q. What was the business of Olde Port Fish 23 Company, Inc.? 24 A. It started out as buying and selling fish from 25 the boats; then it included retail sales; then it
15 1 the Point Loma Fishing Company, Inc.? 2 A. Yes, but I was not a major stockholder. 3 Q. Don't you own 50 percent of that? 4 A. 50 percent. I'm an equal. 5 Q. Okay. What other California corporations, 6 besides Point Loma Fishing Company, Inc., and Olde Port 7 Fisheries, Inc., have you started? 8 A. Olde Port Fish Company, Inc. 9 Q. Any others? 10 A. Not that I can think of as of this moment. 11 Q. So we've got -- I just want to make sure the 12 record is clear here. You started three corporations: 13 Olde Port Fisheries, Inc., Olde Port Fish Company, Inc., 14 and Point Loma Fishing Company, Inc. Is that right? 15 A. Correct. 16 Q. Are all of those California corporations? 17 A. Yes. 18 Q. And have all of them been Subchapter S 19 corporations? 20 A. First of all, I don't know. I would have to 21 guess. I don't think that Olde Port Fish Company, Inc., 22 was an S corporation, but I didn't know at the time an 23 "S" from any other kind of corporation. I still don't 24 know the difference. 25 Q. When was Olde Port Fish Company, Inc., started?	15 1 included a restaurant. 2 Q. And what was the restaurant? 3 A. The restaurant was called the "Olde Port Inn." 4 Q. So the Olde Port Inn -- you owned that 5 restaurant, but you ran it under the Olde Port Fish 6 Company, Inc., corporation? 7 A. Correct. 8 Q. Okay. Is the Olde Port Fish Company, Inc. 9 corporation still in existence? 10 A. No. 11 Q. When did that corporation cease to exist? 12 A. I believe, at the end of the 1980s. 13 Q. And were the assets of that corporation 14 transferred to some other corporation? 15 A. I don't know how to answer that. 16 Q. What happened to the business -- well, for 17 example, the restaurant? 18 A. Well, I'll explain why I can't answer that. I 19 transferred it to Leonard Cohen, who put the tables and 20 chairs and stuff in a corporation that he developed. So 21 it's that transfer to another corporation, another 22 person. That's why I don't know how to answer that, but 23 that happened with the assets. 24 Q. You sold the restaurant to Leonard; is that 25 right?

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	18		20
1	A. Yes.	1	joint ventures; is that correct?
2	Q. And when you sold that restaurant to Leonard,	2	A. If I understand your question, it's either/or.
3	he took that and put it into a new corporation; is that	3	Yes, I have. I have.
4	your understanding?	4	Q. You have personally?
5	A. He had started a corporation first.	5	A. I have.
6	Q. Right.	6	Q. Can you tell us what joint ventures you have
7	A. And he had an operating corporation, and he	7	been a party to?
8	operated the restaurant for me first. And then he	8	A. I was a party to a joint venture with Del Mar
9	bought the restaurant assets from me.	9	Seafoods. I was a party to a joint venture of Artemis,
10	Q. And was that corporation Olde Port Inn, Inc.?	10	Inc., with Joe Cappuccio, and I was a party to a Mexican
11	A. Yes.	11	corporation with Joe Cappuccio and Victor Segura.
12	Q. So Olde Port Inn, Inc., started operating the	12	Q. Were you also a party to a joint venture with
13	restaurant for Olde Port Fish Company, Inc., and then	13	Fisherman Johnny?
14	you sold the restaurant to Leonard, and he began not	14	A. Yes.
15	only managing, but actually running and owning the	15	Q. So that's at least four joint ventures that
16	restaurant under the Olde Port Inn, Inc.?	16	you've been a party to; correct?
17	A. After a certain amount of time.	17	A. Correct.
18	Q. Are you a shareholder in Olde Port Inn, Inc.?	18	Q. Are there any more than that?
19	A. No.	19	A. Not that I recall.
20	Q. Do you have any ownership interest or derive	20	Q. Are there any that your corporations have been
21	income from Olde Port Inn, Inc.?	21	a party to that are in addition to those four?
22	A. No.	22	A. Not that I can recall.
23	Q. You don't get any lease income from them?	23	Q. What was the joint venture you had with
24	A. No. I have to clarify that. We share rent, so	24	Del Mar?
25	however you want to look at that, but I don't actually	25	A. We bought, processed and sold fish at my lease
	19		21
1	get any income. Olde Port Inn and Olde Port Fisheries,	1	site at Port San Luis.
2	Inc., share a lease site and we both pay the rent.	2	Q. What were the terms of that joint venture?
3	Q. And the lease site is the property in Avila	3	A. By "terms," you mean what?
4	Beach; correct?	4	Q. What were the basic terms under which the
5	A. On the pier at Port San Luis; correct.	5	parties entered into a joint venture?
6	Q. Okay. When was the Point Loma Fishing Company,	6	A. That Del Mar Seafoods would finance it; I would
7	Inc., started?	7	manage it, be the manager of it and be -- and manage the
8	A. I don't remember the year.	8	property of it; and we would split the profits 50-50.
9	Q. Can you give me your best estimate?	9	Q. When you were the manager, how were you paid?
10	A. My best estimate would be in the early 2000s --	10	Were you paid only on that 50-50 profit split?
11	or late. I would say the early 2000s.	11	A. No. I was also an employee.
12	Q. So the Point Loma Fishing Company, Inc., was	12	Q. So you had an employment relationship with
13	founded prior to execution of the promissory note and	13	Del Mar in this joint venture?
14	mortgage that is the subject of this litigation?	14	A. Actually, we considered that I had an
15	A. I believe it was after.	15	employment with the joint venture and shared in the
16	Q. When was the promissory note and mortgage that	16	profit of the joint venture. Had it not been for the
17	is the subject of this litigation signed?	17	joint venture at that time, I would not have been an
18	A. I don't remember.	18	employee.
19	Q. But you believe the Fishing Company, Inc. --	19	Q. So, was the income that you received from that
20	Port Loma Fishing Company, Inc. -- was established after	20	joint venture -- you said you were an employee. You got
21	that?	21	a paycheck; is that right?
22	A. I believe so.	22	A. Correct.
23	Q. In addition to your California corporations,	23	Q. But you also shared 50-50 in the profits;
24	you have also been a party, either individually or	24	right?
25	through your different corporations, in a number of	25	A. Correct.

6 (Pages 18 to 21)

<p style="text-align: right;">22</p> <p>1 Q. Were the payments you received as an employee 2 deducted from the 50-50, or was it in addition to your 3 50 percent profit share?</p> <p>4 A. In addition to.</p> <p>5 Q. Okay. As the manager of that joint venture, 6 what were your responsibilities?</p> <p>7 MR. WALSH: Asked and answered.</p> <p>8 THE WITNESS: Normal management 9 responsibilities: That I would manage it; I would 10 oversee the operation.</p> <p>11 MR. POULOS: Q. On a day-to-day basis?</p> <p>12 A. On a day-to-day basis.</p> <p>13 Q. Were you responsible for approving transfers of 14 inventory to customers of the joint venture?</p> <p>15 A. You mean, selling them?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. Did you sell -- when you were the manager of 19 that joint venture, did you sell product to Michael 20 Cohen, your son?</p> <p>21 A. I believe -- well, I don't know if I sold it to 22 him personally, but I was aware that he bought some 23 product from the joint venture.</p> <p>24 Q. And he did so on an account; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">24</p> <p>1 Q. You understood that Olde Port Fisheries, 2 then -- that JV was basically operating as a division of 3 Del Mar; is that correct?</p> <p>4 A. No, it was not a division of Del Mar.</p> <p>5 Q. But it was termed that by some?</p> <p>6 A. Only by one, that I know.</p> <p>7 Q. And who was that?</p> <p>8 A. The bookkeeper put it on the top of the 9 statement on her own volition.</p> <p>10 Q. Was Michael Cohen an employee of that joint 11 venture?</p> <p>12 A. Yes.</p> <p>13 Q. And in what capacity was he employed by the JV?</p> <p>14 A. He was an employee, a worker.</p> <p>15 Q. Doing what?</p> <p>16 A. He worked on the dock and inside the market.</p> <p>17 Q. At some point did he also become not just an 18 employee, but also a customer?</p> <p>19 A. Correct.</p> <p>20 Q. And can you tell me in what capacity he became 21 a customer? What was he doing?</p> <p>22 A. In a very small capacity he was trying to sell 23 fish to a couple local restaurants.</p> <p>24 Q. Did he also try to start a web-based fish sales 25 business?</p>
<p style="text-align: right;">23</p> <p>1 Q. And that's often termed "on account"; correct?</p> <p>2 A. Well, it was termed a "receivable."</p> <p>3 Q. But it was on a running account balance that he 4 kept with the joint venture, an open book account, if 5 you will?</p> <p>6 A. Well, those are your terms, but I would say it 7 seems to be the same as what I'm saying.</p> <p>8 Q. Well, why don't you describe -- was he allowed 9 to take inventory and have the balance owed on that 10 inventory added to a running account balance?</p> <p>11 A. He was not allowed to take inventory -- no more 12 than anybody else was allowed to take inventory. If he 13 wanted anything, he was invoiced and the invoice was 14 applied to his receivable.</p> <p>15 Q. Was the same true for Leonard Cohen and the 16 Olde Port Inn?</p> <p>17 A. Yes.</p> <p>18 Q. So Leonard and Olde Port Inn were also 19 customers who obtained fish product from the joint 20 venture?</p> <p>21 A. Correct.</p> <p>22 Q. And that joint venture was called "Del Mar 23 Seafoods, Inc., Olde Port Fisheries Division," is that 24 right?</p> <p>25 A. By some. It was not an official name.</p>	<p style="text-align: right;">25</p> <p>1 A. Yes, he did.</p> <p>2 Q. And did the joint venture allow him to purchase 3 fish on account for both of those businesses?</p> <p>4 A. We sold fish to Michael at a profit, at a 5 profit margin. What he did with those fish or what the 6 split was -- some went to restaurants, some went to the 7 web thing. I don't know if he got orders on the web 8 deal; I don't know.</p> <p>9 So all I know is, yes, he did buy fish, and 10 whatever he did with that was up to him. I know he did 11 start a website and put our location and everything on 12 the pier. And that's what I know about it.</p> <p>13 Q. The joint venture with Del Mar eventually 14 ended; is that correct? You stopped being in a joint 15 venture with Del Mar in Avila Beach?</p> <p>16 A. To be exact, Del Mar ended the joint venture. 17 Joe Cappuccio ended the joint venture.</p> <p>18 Q. Do you recall when that was done?</p> <p>19 A. Sometime in 2004.</p> <p>20 Q. When that joint venture ended, did Michael owe 21 a balance on his account with the joint venture?</p> <p>22 A. Yes, he did.</p> <p>23 Q. Do you recall how much that was?</p> <p>24 A. I do not.</p> <p>25 Q. Do you know, since you were the manager,</p>

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<p>26</p> <p>1 whether he ever paid that balance? 2 A. The balance from when we closed? 3 Q. Yes. 4 A. I know he made a payment and I know there was 5 credit given for another payment. But did he pay it 6 off? The answer is no. 7 Q. Did you ever agree to be responsible for that 8 debt of Michael Cohen? 9 MR. WALSH: Objection. Vague. If you 10 understood the word "responsible," you can try and 11 answer it. 12 THE WITNESS: Well, I said I would be 13 responsible for it. 14 MR. POULOS: Q. Who did you say that to? 15 A. Joe Roggio, for one. 16 Q. When did you tell Joe Roggio that you would be 17 responsible for Michael Cohen's debt? 18 A. Sometime after we closed the joint venture. 19 Q. So sometime after 2004? 20 A. Sometime in 2004. 21 Q. Okay. Who else did you tell that you would be 22 responsible for Michael's debt? 23 A. Probably Michael. 24 Q. Have you paid that debt? 25 A. Not intentionally.</p>	<p>28</p> <p>1 responsible for it. So to ask me after many things have 2 changed am I still responsible for it is not a valid 3 conclusion. A lot of things have changed that changed 4 that agreement. 5 Q. What has changed that -- well, do you believe 6 the debt has been forgiven? 7 A. I don't think that's the right terminology. 8 Q. What is it that you think has changed that 9 makes you no longer -- or that allows you to revoke your 10 responsibility for that debt? 11 A. I am not revoking my responsibility for that 12 debt. That's your word. That's not what I said. But 13 if you want me to answer, I will, but then I will answer 14 with the whole truth, and if that's what you would like 15 me to do, I will. 16 Q. Of course, I want you to tell me the whole 17 truth. Why do you feel you are no longer responsible 18 for that debt? 19 A. Okay. For several reasons. Number one is when 20 I said I would be responsible for it, I was thinking 21 that I would, as an employee of Del Mar, collect that 22 money over time, and I didn't worry about it because I 23 was an employee of Del Mar. And why I had confidence to 24 be an employee of Del Mar is because when Joe Cappuccio 25 asked me if I would come work at the Watsonville</p>
<p>27</p> <p>1 Q. Have you paid it, in your own estimation? 2 A. In my mind? 3 Q. Yes. 4 A. No. 5 Q. When fisherman -- well, withdrawn. 6 How much do you understand that you are 7 responsible to pay for Michael's debt? 8 A. Today? 9 Q. Yes. 10 A. Nothing. 11 Q. How much do you believe the debt was at the 12 time that you agreed to be responsible for it? 13 A. I don't know. 14 Q. And why do you contend -- you've said in your 15 own mind, you haven't paid that debt; correct? 16 A. In my own mind, I have not paid it. 17 Q. And in your -- and you agree that you had 18 agreed to be responsible for it? 19 A. I agreed to be responsible for it. At the time 20 I said that I will be responsible for it. 21 Q. And you're a man of your word, aren't you? 22 A. Yes. 23 Q. You're not trying to back out of being 24 responsible for it, are you? 25 A. I said at the time I said that, I was</p>	<p>29</p> <p>1 plant -- he offered me that job -- I talked to Joe 2 Roggio, we went out to lunch, and Joe said, "You know, 3 we want you to come here." 4 And I said, "You know what, Joe. For me to 5 sell my house and to buy a different house up here is a 6 huge commitment, and what security do I have that I 7 would have this job?" And Joe Roggio told me that day 8 that if you come up here, if you sell your house in 9 Cambria and you move up here, you can work for this 10 company as long as you'd like to; that will be your 11 security. 12 And the day that Joe Cappuccio called me in his 13 office and he said, "Barry, we no longer need your 14 services," I asked Joe Roggio, "Joe, what about the 15 promise you made me if I moved and bought a house up 16 here and sold my house in Cambria?" 17 And Joe Roggio said, "Things change, you know." 18 That's a quote. "Things change, you know." That's the 19 God's honest truth. That was one reason. 20 The second reason is because when Del Mar left, 21 they didn't want anything to do with that joint venture. 22 They did not want to be involved with the harbor; they 23 did not want to be a party to the lawsuit; they didn't 24 want to be involved in any way. And Joe Cappuccio 25 walked away from the joint venture. And Joe Roggio</p>

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1 signed an assignment giving me all the rights and
 2 everything of that joint venture to me, and excluded
 3 them from any involvement in the joint venture at all.
 4 And when he signed that, he was well aware that there
 5 were receivables on that joint venture receivable,
 6 including Michael and Leonard Cohen. And he assigned it
 7 all to me; he didn't -- there was no revoking anything.
 8 Those are the reasons.

9 And there was one more reason. And because
 10 when I made a boat payment to -- I made it to Del Mar
 11 Seafoods, but I handed it to Joe Cappuccio -- then Joe
 12 Roggio, on his own volition, applied it to outstanding
 13 balances that are on that piece of paper he gave me,
 14 which included Michael and Leonard's thing, and he
 15 showed them as paid off with that \$175,000 payment.

16 So, on the left hand, Del Mar is saying that it
 17 was okay that they took the money and applied it there,
 18 and then today they're saying I still owe it. Well, it
 19 can't be both ways. So that's why, in my mind, this
 20 whole thing doesn't make any sense.

21 I gave that money as a payment against that
 22 boat loan because Joe Cappuccio asked me if I would help
 23 him because the bank was giving him a problem about
 24 having such a big loan on his books. He asked me as a
 25 favor to do something, to make a big loan. I said I

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1 A. I understand that's what it said on that paper
 2 that I told him didn't look right to me.
 3 Q. Okay. You understand that Del Mar believed
 4 that that payment, that \$175,000 payment, if properly
 5 applied, in Del Mar's mind, paid off that balance you
 6 owed on the Michael debt. You understand that?

7 A. Absolutely not.

8 Q. That's Del Mar's position?

9 A. No, not true. They did not think that for one
 10 second, because Joe Cappuccio asked me to get that money
 11 for him to apply to the note that showed on their books
 12 for the boat.

13 And Greg, I want to say something between you
 14 and I. Please don't say inflammatory things to me.
 15 Don't say I revoke on my word and things. That's not
 16 necessary. We're going to be nice to each other; okay,
 17 please? I won't be inflammatory to you.

18 Q. I'm not trying to be inflammatory.

19 A. I know, but with your choice of words, be
 20 careful. Okay?

21 Q. I am.

22 A. Okay. Good.

23 Q. You've given me three reasons why you think
 24 that the debt you personally assumed for Michael Cohen
 25 you no longer owe. And I just want to make sure that

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1 would see what I could do. I went, talked to my wife,
 2 we got a second on our house, and I gave Joe Cappuccio
 3 that check as a payment against the loan that I had on
 4 the boat. That's the essence of how the whole thing
 5 worked.

6 Q. Okay. Let's look at -- the first one, for the
 7 Michael Cohen debt -- we're talking about the Michael
 8 Cohen debt -- you agreed to be responsible for it;
 9 correct? Is that right?

10 A. That's what I said.

11 Q. You didn't say -- and it was you personally
 12 assuming that responsibility; is that right?

13 MR. WALSH: I believe you've answered that
 14 question.

15 MR. POULOS: You can answer it again.

16 THE WITNESS: I said I would be responsible.

17 MR. POULOS: Q. Okay. With respect to the
 18 boat payment, you're talking about the payment of the
 19 \$175,000; right?

20 A. That's the one I was referring to.

21 Q. Okay. You understand that Del Mar believed --
 22 as you said, Joe Roggio, applied a portion of that
 23 payment to pay off the Michael Cohen debt that you said
 24 you would be responsible for; correct? You understand
 25 that's what Joe Roggio did?

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1 those are the three reasons, the only three reasons,
 2 that you're relying on for saying that you no longer owe
 3 that debt.

4 A. I'm going to say --

5 MR. WALSH: Wait, Barry. Let me put an
 6 objection on the record.

7 I'll put an objection on the record that you
 8 cannot ask him for a legal conclusion; that there are
 9 legal positions why he is not obligated to pay in
 10 addition to whatever he may believe. With that, you can
 11 answer.

12 THE WITNESS: Okay. I need -- do me a favor.
 13 Read that back, what he asked me.

14 MR. POULOS: I'll rephrase it. I just want to
 15 make sure I'm getting everything on the record today.

16 Q. We've established that you told Joe Roggio and
 17 Michael, at least those two people, that you would be
 18 responsible for Michael's debt.

19 A. That's true, but I think you said that I
 20 assumed Michael's debt.

21 Q. By being responsible for it, I consider that
 22 assuming that debt.

23 A. But that's not what I said. I said I would be
 24 responsible for it.

25 Q. What did that mean to you?

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<p>34</p> <p>1 A. That I would see that Del Mar got paid that 2 money. And that's a huge difference, in my mind, to 3 assuming something for myself. I said I will be 4 responsible for it. Exact words.</p> <p>5 And I can't say that's the only three reasons. 6 I don't know if that is. I wasn't even thinking what 7 Bud was thinking, but those are the three that are on 8 the top of my mind of -- where I think I did not go back 9 on my word. I felt like, one, they were all assigned to 10 me, anyhow. It was given -- all the receivables were 11 given to me, so I could pay myself, if I want. And the 12 second -- or I could forgive them; I could do whatever I 13 want with them.</p> <p>14 And the other one is when Joe Roggio made that 15 paper and I said to him, "This does not look right to 16 me," and he said, "Barry, I'm just cleaning up the 17 books; it's okay," meaning that what I understood what 18 he said when he was just cleaning up the books is that 19 it meant exactly that: He was justing up the books. 20 I still -- when I was going to pay off the amount of 21 money against that loan for the boat, that I would then 22 say I want that note signed back to me; that we're done. 23 And that's what I thought he meant: That he was just 24 cleaning up his books. It had nothing to do with what 25 was going on with me, because I gave that payment 100</p>	<p>36</p> <p>1 A. Presumably. I would think so, but I didn't 2 follow the fish.</p> <p>3 Q. Do you have an idea of how much those debts 4 were?</p> <p>5 A. I don't.</p> <p>6 Q. By the time the joint venture was wound up, had 7 those debts been paid?</p> <p>8 A. His receivables had not been paid.</p> <p>9 Q. Did you also agree to be responsible for those 10 debts?</p> <p>11 A. Yes.</p> <p>12 Q. And did you tell that to Joe Roggio?</p> <p>13 A. Yes.</p> <p>14 Q. Did you tell that to Joe Cappuccio?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Did you tell it to Leonard?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any idea as you sit here today how 19 much of Leonard's debt you agreed to be responsible for?</p> <p>20 A. Whatever his debt was on the receivables to the 21 joint venture.</p> <p>22 Q. You were given a payment schedule by Joe Roggio 23 after you made the \$175,000 payment that showed debts 24 for Michael, debts for Leonard, debts for inventory. Do 25 you remember that?</p>
<p>35</p> <p>1 percent for that note amount, that note loan, because 2 that was the one that I was asked to do and it made 3 sense to me because that's the one I had collateral on.</p> <p>4 Q. We're going to come back to what that note was 5 for in a few minutes.</p> <p>6 A. Okay.</p> <p>7 Q. Let's talk about --</p> <p>8 A. Can we take a quick break right now. I just 9 need to run to the restroom.</p> <p>10 MR. POULOS: Absolutely.</p> <p>11 (Recess from 11:06 to 11:17)</p> <p>12 MR. POULOS: Okay. Let's go back on.</p> <p>13 Q. We've talked about Michael Cohen's debt. There 14 were some debts that Leonard Cohen also owed to Del Mar 15 Seafoods; is that right?</p> <p>16 A. No.</p> <p>17 Q. Who did he owe the debts to?</p> <p>18 A. The joint venture.</p> <p>19 Q. And what you're contending is owed to the Avila 20 Beach joint venture?</p> <p>21 A. Correct.</p> <p>22 Q. What were those debts for?</p> <p>23 A. For fish that he purchased from the joint 24 venture.</p> <p>25 Q. For use at Olde Port Inn, presumably?</p>	<p>37</p> <p>1 MR. WALSH: Objection. Vague as to time.</p> <p>2 MR. POULOS: Q. You know the schedule I'm 3 talking about?</p> <p>4 A. What was termed, I believe, written on there, 5 was "Statement of Payments." Is that --</p> <p>6 Q. Yes.</p> <p>7 A. Okay. And -- say your question again.</p> <p>8 Q. With respect to that, that showed balances due 9 from Michael, balances due from Leonard, and how those 10 were paid off by that \$175,000 payment; right?</p> <p>11 A. And inventory.</p> <p>12 Q. And inventory.</p> <p>13 A. And that showed what Joe Roggio put on there.</p> <p>14 That's what it showed to me. Not -- you have to 15 remember, I said it doesn't look right to me for a lot 16 of reasons.</p> <p>17 Q. My question is: In terms of the numbers that 18 were on there for the debts of Michael and the debts of 19 Leonard and the debts for inventory, did you disagree 20 with those figures? Not whether they were still owed or 21 whether the payment was applied, but in terms of the 22 number of what that debt was that you agreed to be 23 responsible for, did you have any disagreement as to 24 that number?</p> <p>25 MR. WALSH: Objection. Assumes facts not in</p>

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<p>46</p> <p>1 Q. By you personally?</p> <p>2 A. Well, I don't know what you're referring to.</p> <p>3 What personally? The difference, or the whole thing,</p> <p>4 or --</p> <p>5 Q. What did you understand that column to</p> <p>6 represent?</p> <p>7 A. That column represents, in part -- the note</p> <p>8 secured by the boat, I believe, is in that number. And</p> <p>9 I believe that in addition to the boat, some other</p> <p>10 monies owed were just put in the same column. I think</p> <p>11 it should have been different. I didn't understand the</p> <p>12 whole thing, but it should have been -- in my opinion,</p> <p>13 should have been the boat note separate from everything</p> <p>14 else, and that's what should have gotten paid.</p> <p>15 Q. The beginning balance that's shown on this</p> <p>16 sheet says the beginning balance is 237,035.48.</p> <p>17 (Inaudible comment by Mr. Walsh)</p> <p>18 MR. POULOS: Let's have this marked as</p> <p>19 Exhibit 1.</p> <p>20 (Whereupon, Exhibit 1 was</p> <p>21 marked for identification.)</p> <p>22 THE WITNESS: It's not the same document, not</p> <p>23 the same document at all. It's a different document.</p> <p>24 MR. ROGGIO: This is a more current one.</p> <p>25 THE WITNESS: This is the one that was done</p>	<p>48</p> <p>1 Q. And what did you think that that figure</p> <p>2 represented?</p> <p>3 A. I think this represents the major part of that</p> <p>4 number I believe was the note for the boat, the</p> <p>5 \$215,000, plus I believe that the rest was some other</p> <p>6 monies owed.</p> <p>7 Q. By you?</p> <p>8 A. That's what I think this shows.</p> <p>9 Q. Okay. What other monies owed do you think were</p> <p>10 included in that?</p> <p>11 A. Greg, I have no idea.</p> <p>12 Q. The beginning balance -- let's talk about the</p> <p>13 note for a minute. You just mentioned a note for</p> <p>14 \$215,000; correct?</p> <p>15 A. Correct.</p> <p>16 Q. That's a promissory note that you understand is</p> <p>17 part of what's at issue in this litigation; right?</p> <p>18 A. Correct.</p> <p>19 Q. And what was the \$215,000 note for? Where did</p> <p>20 that debt come from?</p> <p>21 A. That's two different questions.</p> <p>22 Q. Where did it come from?</p> <p>23 A. It came from when Joe Cappuccio was going to</p> <p>24 buy a 50 percent interest in the Point Loma so we could</p> <p>25 go a 50-50 joint venture in Mexico. Initially, he</p>
<p>47</p> <p>1 after I got laid off, when I asked for it. No, it was</p> <p>2 not even that. That was the most recent one.</p> <p>3 MR. POULOS: Let me take a break and grab the</p> <p>4 right one.</p> <p>5 (Recess from 11:36 to 11:40)</p> <p>6 MR. POULOS: Q. You want to compare that,</p> <p>7 because I think this is the one. I think that's the</p> <p>8 same, except, you know, it doesn't have the handwriting</p> <p>9 on it.</p> <p>10 A. It might be even clearer. But anyway --</p> <p>11 Q. I think it's a little better than this one.</p> <p>12 A. I know there's a good copy of, you know, kind</p> <p>13 of the original of this that didn't get all blurred in</p> <p>14 faxing and stuff.</p> <p>15 MR. POULOS: Let's re-mark Exhibit 1 so that</p> <p>16 we've got a proper Exhibit 1.</p> <p>17 (Whereupon, Exhibit 1 was</p> <p>18 marked for identification.)</p> <p>19 MR. POULOS: Q. Why don't you take a look at</p> <p>20 Exhibit 1, which I think is a slightly better copy than</p> <p>21 the one we've been looking at.</p> <p>22 All right. So we've been talking about the</p> <p>23 figures under -- we've gotten to look at the figure</p> <p>24 under the column called "Barry"; correct?</p> <p>25 A. Correct.</p>	<p>49</p> <p>1 wanted to buy a 50 percent interest in the Point Loma.</p> <p>2 I had to get the Point Loma ready to go to Mexico, and</p> <p>3 had a lot of upgrades to do on it. Going to -- Mexico</p> <p>4 is like a third world country -- no infrastructure -- so</p> <p>5 there was a lot of things we had to do to make the boat</p> <p>6 self-sufficient. So a lot of the money that I used was</p> <p>7 to upgrade the boat. While the boat was being upgraded,</p> <p>8 then there were expenses on the boat. And all of the</p> <p>9 money that was on that note, at the time we did it, was</p> <p>10 to be applied to the purchase price of one half interest</p> <p>11 in the boat. That's where the amounts of money came</p> <p>12 from.</p> <p>13 Q. That added up to what you say was the original</p> <p>14 215 balance?</p> <p>15 A. I think I always said that was an approximate</p> <p>16 number. But that's not why the note was made. That's a</p> <p>17 different answer -- different question.</p> <p>18 Q. You know who Dave Cantrell is; right?</p> <p>19 A. Yes.</p> <p>20 Q. He's your CPA?</p> <p>21 A. Yes.</p> <p>22 Q. And he was involved in trying to help you and</p> <p>23 Joe Cappuccio set up the joint venture for Mexico;</p> <p>24 correct?</p> <p>25 A. He was somewhat involved.</p>

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<p style="text-align: right;">50</p> <p>1 Q. You consulted with him on that process?</p> <p>2 A. I don't know if I did or if Gene Glaser did or</p> <p>3 if we did together. I don't remember how it came about,</p> <p>4 but he did get involved.</p> <p>5 Q. Just so we've got it on the record, you and Joe</p> <p>6 Cappuccio had the idea of creating a joint venture to</p> <p>7 fish using the Point Loma in Mexican waters; correct?</p> <p>8 A. That's pretty correct.</p> <p>9 Q. And that became what ultimately is sort of</p> <p>10 short-handed to be known as the "Mexico joint venture,"</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And as part of that joint venture, Joe</p> <p>14 Cappuccio was going to contribute certain things to the</p> <p>15 joint venture; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And one of those was the cost of a fishing</p> <p>18 permit for the Point Loma to fish in Mexican waters;</p> <p>19 correct?</p> <p>20 A. Well, that's what happened.</p> <p>21 Q. Okay. And in addition, he was going to</p> <p>22 purchase -- originally, the plan was that he would</p> <p>23 purchase a half interest in the Point Loma?</p> <p>24 A. Correct.</p> <p>25 Q. And he would do that by paying for certain</p>	<p style="text-align: right;">52</p> <p>1 A. That's the end result.</p> <p>2 Q. Right. But the amounts that were included in</p> <p>3 that promissory note were not just amounts for the</p> <p>4 improvements on the Point Loma, were they?</p> <p>5 A. I don't think so.</p> <p>6 Q. You don't think I'm right?</p> <p>7 A. No. I don't think that they were all just for</p> <p>8 improvements on the Point Loma. There were a lot of</p> <p>9 maintenance issues; there was insurance to be paid. The</p> <p>10 boat got tied up for a long time, too, trying to get all</p> <p>11 this done. So there were expenses that were really not</p> <p>12 upgrades, but they were maintenance of it.</p> <p>13 Q. Also included when you converted all this into</p> <p>14 the promissory note were debts that you owed for</p> <p>15 personal advances; is that correct?</p> <p>16 A. Well, I don't know.</p> <p>17 Q. Well, isn't it true that you previously have --</p> <p>18 well, withdrawn.</p> <p>19 Why don't you take a look at -- we'll mark this</p> <p>20 as Exhibit 2.</p> <p>21 (Whereupon, Exhibit 2 was</p> <p>22 marked for identification.)</p> <p>23 MR. WALSH: I'm going to generally object to</p> <p>24 this line of questioning on the basis of the parol</p> <p>25 evidence rule.</p>
<p style="text-align: right;">51</p> <p>1 upgrades on the Point Loma; is that right?</p> <p>2 A. No.</p> <p>3 Q. How was he funding that purchase? I'll</p> <p>4 withdraw that. Let me ask it this way.</p> <p>5 In addition to purchasing the Mexico fishing</p> <p>6 permit, Joe Cappuccio was also going to pay for certain</p> <p>7 improvements or upgrades, however you want to phrase it,</p> <p>8 to the Point Loma; is that right?</p> <p>9 A. Well, he was -- he would advance the money to</p> <p>10 get that done. He actually didn't do any upgrading or</p> <p>11 anything like that; his whole contribution was money.</p> <p>12 And it was used mostly for upgrade of the vessel and</p> <p>13 maintaining the vessel and paying the bills for the</p> <p>14 vessel. And whatever the total amount would be would be</p> <p>15 applied to his purchasing a 50 percent interest in the</p> <p>16 Point Loma. And I believe -- well, I don't know. I</p> <p>17 can't remember anything other than, really, that's the</p> <p>18 basic thing that happened. I don't want to say anything</p> <p>19 that's wrong, because I don't know.</p> <p>20 Q. Eventually, Joe ended up not purchasing part of</p> <p>21 the Point Loma; is that right?</p> <p>22 A. Correct.</p> <p>23 Q. And instead, the amounts advanced were</p> <p>24 converted to a promissory note and mortgage against the</p> <p>25 Point Loma; is that correct?</p>	<p style="text-align: right;">53</p> <p>1 THE WITNESS: Okay.</p> <p>2 MR. POULOS: Q. Have you seen this document</p> <p>3 before?</p> <p>4 A. Yes, I have.</p> <p>5 Q. And you know that this is a document, also,</p> <p>6 that Mr. Cantrell testified about a couple of weeks ago</p> <p>7 when we took his deposition; right?</p> <p>8 A. Right.</p> <p>9 Q. And you were present for that deposition?</p> <p>10 A. Correct.</p> <p>11 Q. And you remember, if you turn to page 2 of this</p> <p>12 memo from Mr. Cantrell, that it lists, in bullet points,</p> <p>13 Mexico fishing permit \$97,000; boat improvements,</p> <p>14 \$84,000; personal loans to Barry Cohen, \$62,004; and</p> <p>15 fishing loans prior to the JV of 53,411. Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. Isn't it true that the last three bullet points</p> <p>19 there -- boat improvements, personal loans and fishing</p> <p>20 loans, or some portions of all of those -- were what</p> <p>21 were converted to the debt --</p> <p>22 A. Yes.</p> <p>23 Q. -- in the promissory note?</p> <p>24 A. That's what I believe.</p> <p>25 Q. So the promissory note wasn't a promissory note</p>

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<p>74</p> <p>1 Point Loma checking account? Because you also wrote 2 checks, personally wrote checks, on that same account to 3 deposit in the checking account of the Point Loma. 4 Isn't it that checking account that was used to pay the 5 insurance and all of the other expenses; not your 6 personal checking account, but the Point Loma account 7 that you also wrote checks to?</p> <p>8 A. Okay. I don't know. But yes, there was a 9 Point Loma account; there was my personal account; there 10 was checks written from me to me with full knowledge of 11 Joe Roggio, Joe Cappuccio. So there was no problem with 12 doing it, whatever at the moment the reason was.</p> <p>13 All of these things have been reviewed by them 14 for years, every year, every month. Joe Roggio said he 15 reviewed all of this; he saw nothing in there he didn't 16 know. So what does that mean? It means that however 17 you want to come to this, we agreed \$215,000 we're 18 putting in a note. I sign the note; my wife signs the 19 note; we're all happy -- the end of all this stuff, 20 because we all put everything like this into a note and 21 that's that. And we guaranteed that note with a ship's 22 mortgage. That's how simple this whole thing is.</p> <p>23 Q. But one of the important points that I think 24 the Court needs to understand is that that note secured 25 not just advances to fix up the boat, but also personal</p>	<p>76</p> <p>1 in the profits at the end of the year. Also, whatever 2 advances that I took were going to be used by Joe 3 Cappuccio to purchase a half interest in the boat. So, 4 I have never changed from that. That's why the boat's 5 involved in this thing: Because Joe said, "I'm going to 6 buy half the boat." Oh, I'm out of here. I don't want 7 to buy half the boat, so, you know, let's take all the 8 money you owe me and we're going to put it into a note, 9 because I backed out and I'm going to get another boat, 10 and here's the note and here's the channel mortgage.</p> <p>11 And that's it, and whoever wants to see it 12 different, that's up to them. Joe Cappuccio was buying 13 half the boat, so he was going to use whatever money I 14 owed him as his money to purchase half the boat. That's 15 why it's involved in it. Okay.</p> <p>16 Q. How did you -- why did you owe Joe Cappuccio 17 money?</p> <p>18 A. For a lot of reasons.</p> <p>19 Q. What were the debts that you owed him that went 20 into it?</p> <p>21 A. I don't know all the debts that went into it, 22 but we have a record of all of them. Joe Roggio could 23 answer them as well as I could.</p> <p>24 Q. What was your understanding of all the debts 25 that went into it?</p>
<p>75</p> <p>1 loans that you had taken out. It's that simple.</p> <p>2 A. That's not true.</p> <p>3 MR. WALSH: Wait a minute, Barry. Don't answer 4 it. That's not a question. He has made a statement to 5 you about what the court is interested in. It's not a 6 question. Do not answer it.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. POULOS: Q. The \$62,004 was not all used 9 for improvements to the boat, was it?</p> <p>10 MR. WALSH: Asked and answered. Parol evidence 11 rule.</p> <p>12 MR. POULOS: You can answer.</p> <p>13 THE WITNESS: I answered this whole thing. 14 I'll do it again.</p> <p>15 Joe Cappuccio was going to buy half the boat. 16 He didn't stipulate --</p> <p>17 MR. POULOS: Q. Let me stop you. I've asked a 18 very simple question. Were all of the 62 --</p> <p>19 A. But that's beside the point. You asked me to 20 tell the whole truth, and you weren't going to interrupt 21 when I'm talking. So let me finish the whole truth, not 22 part truth. I'm not going to answer the way you want me 23 to. I'm going to answer the truth.</p> <p>24 The truth is that -- I explained to you that 25 the money that was advanced to me was, one, for sharing</p>	<p>77</p> <p>1 A. Whatever I owed Del Mar as of the point that 2 I'm referring to, then that's what went into that 3 note -- or Joe Roggio's interpretation of everything, 4 because he's the one that did it. I didn't do it.</p> <p>5 You know what. I didn't go through all these 6 papers; Joe Roggio did. All the end result is he says 7 this is what you owe; Joe's not going to buy the boat. 8 We want to take this money instead of him buying the 9 boat. And nobody ever stipulated to me, ever, that 10 because Joe is going to buy the boat and he's going to 11 pay for half the boat and not take an advance against 12 the half of the boat -- nobody even said I couldn't go 13 to Europe if I wanted. It was: I'm going to buy the 14 boat; we're going to figure out how much money and I'm 15 going to buy the boat. That was the whole thing.</p> <p>16 When he decided not to buy the boat, we took 17 all the money that I took for whatever reason and we put 18 it in a note because he asked me to. I didn't have to 19 put it in a note; I had no obligation to put it in a 20 note. I gave him a note because he asked me, in case 21 something happened to me, "So I won't have a fight with 22 your kids over who owes what, please put it in writing."</p> <p>23 I had no obligation; I did it to make it good 24 for him because I understood what he meant. I owed the 25 money, and he was going to -- he didn't want to buy the</p>

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<p>78</p> <p>1 boat, so he was going to let me pay it off. I said, 2 "Okay, fine." My wife and I signed the note. That's 3 how this whole thing happened. Any other way you want 4 to interpret it, I don't know, Greg, but that's it.</p> <p>5 Q. You cannot tell us any more specifically than 6 that what all the debts were that got conglomerated, for 7 lack of a better term, into that note?</p> <p>8 A. I just told you.</p> <p>9 Q. So whatever debts they were from whatever 10 source, whatever you did with that money, all that got 11 conglomerated into that one note when it was signed; is 12 that --</p> <p>13 (Joe Roggio enters the conference room.)</p> <p>14 A. That's a misstatement of what I said. What I 15 said was Joe Cappuccio was going to buy half the boat. 16 That's where all this came from. Whether they were an 17 advance to me or whether I upgraded the boat, or 18 whatever I did, it was against the purchase of the boat. 19 Joe decided he didn't want to buy the boat. So, Joe 20 asked me, would I sign a note for the amount of money 21 that I owed, since he's not going to buy the boat, he's 22 not going to add up all the money and say, okay, at this 23 point I own half the boat. He said: I don't want to do 24 that; I want to -- I've got my own boat. So, whatever 25 money that was going to be used to purchase half the</p>	<p>80</p> <p>1 Q. Well, you had a separate -- 2 A. Yes.</p> <p>3 Q. You as the owner of the Point Loma had a 4 checking account for the Point Loma?</p> <p>5 A. Yes.</p> <p>6 Q. And, then, you as the manager of the Del Mar 7 Foods, Inc., Olde Port Fisheries Division wrote checks 8 to that vessel, to your vessel, the Point Loma, that 9 were deposited into that Point Loma checking account; 10 right?</p> <p>11 A. Say that again.</p> <p>12 Q. As the manager of the Del Mar Seafoods, Inc., 13 Olde Port Fisheries Division, you wrote checks to the 14 F/V, Fishing Vessel Point Loma, that were then deposited 15 in the Point Loma checking account; right?</p> <p>16 A. I may have, yes.</p> <p>17 Q. Would you look, please, at Exhibit 4 and tell 18 us if this is checks that you wrote on the Del Mar 19 Seafoods, Inc., Olde Port Fisheries Division checking 20 account payable to the F/V Point Loma, your fishing 21 boat, and deposited in that fishing -- in that checking 22 account.</p> <p>23 A. Of the ones I see, that's what it looks like.</p> <p>24 Q. Okay. And if you look at the first two pages 25 here on Exhibit 4, the checks that are attached are</p>
<p>79</p> <p>1 boat is what went into the note. Okay.</p> <p>2 Q. We're still missing the question and the answer 3 of whatever the monies were that were going to go into 4 purchase of the boat. What were those monies? Where 5 did that money come?</p> <p>6 A. From Joe Cappuccio and Del Mar Seafoods.</p> <p>7 Q. And what did you get that money for?</p> <p>8 A. I can't tell you, Greg. Look at how many 9 checks there are. There's categories. You have all the 10 papers. You have what was called "upgrades"; you have 11 what's called "personal loans" or "fishermen advances." 12 You have all the data. It was -- well, Joe Roggio added 13 up all the things that were like outstanding for the 14 purchase of the boat, and we agreed on the amount and 15 made a note, and Chris and I signed it.</p> <p>16 (Mr. Kelley enters the conference room.)</p> <p>17 MR. POULOS: Let's have this marked as exhibit 18 next in order.</p> <p>19 (Whereupon, Exhibit 4 was 20 marked for identification.)</p> <p>21 MR. POULOS: Q. We already talked about that 22 there was a separate checking account that you 23 retained -- or maintained for the Point Loma itself; 24 correct? We talked about that a few minutes ago.</p> <p>25 A. That I signed on, myself.</p>	<p>81</p> <p>1 checks that are shown on the ledger for the fishermen 2 advances for the F/V Point Loma; is that right?</p> <p>3 A. Before I answer that, all the ones checked are 4 the ones that are here?</p> <p>5 Q. Yes.</p> <p>6 A. So if I look at all these, I can answer all of 7 them at one time?</p> <p>8 Q. Yes.</p> <p>9 A. Okay. If I didn't miss any, all the ones in 10 here look like I wrote them, signed them and deposited 11 them in -- I'm going to say the Point Loma account, but 12 I'm not a hundred percent positive, because I didn't 13 check all the numbers on the checks. But I made them 14 and signed them.</p> <p>15 Q. And if you look at the first two pages, that's 16 the ledger for the fisherman advances for the Point Loma 17 that add up to the transfer balance of \$53,410.50, 18 right, or fifty-something cents?</p> <p>19 A. 410.50, rounded up to 411.</p> <p>20 Q. If you look back at Gene Glaser's -- I'm 21 sorry -- at Dave Cantrell's memo, Exhibit 2, the 22 "Fishing loans prior to JV" is 53,411; right?</p> <p>23 A. That's what I just made a reference to, yes.</p> <p>24 Q. Right. So what I'm -- again, those three last 25 bullet points on Dave Cantrell's memo, "Boat</p>

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<p style="text-align: right;">94</p> <p>1 Q. Within a month?</p> <p>2 A. I don't know. It was definitely after. It</p> <p>3 could have been a month; it could have been five months.</p> <p>4 I don't know.</p> <p>5 Q. Is there any document that you're aware of that</p> <p>6 would help you place the time of when that specific</p> <p>7 conversation took place?</p> <p>8 A. No, I can't think of one.</p> <p>9 Q. Did you -- at the time that you agreed to be</p> <p>10 responsible for Michael and Leonard's debt, did you have</p> <p>11 any balance owed to Del Mar other than the amount --</p> <p>12 well, provided for under the promissory note? In other</p> <p>13 words, did you have some separate balance or account</p> <p>14 with them besides the promissory note amount?</p> <p>15 A. After we closed the joint venture?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. What was that other account?</p> <p>19 A. We had -- I had a boat receivable for advance</p> <p>20 fuel and ice for fishing, and I had a receivable for</p> <p>21 Olde Port Fisheries, Inc., where we bought fish from</p> <p>22 Del Mar. So I had that.</p> <p>23 Q. So it was a Del Mar receivable?</p> <p>24 A. Those were both Del Mar amounts. They were</p> <p>25 owed to Del Mar, not the joint venture. It was closed.</p>	<p style="text-align: right;">96</p> <p>1 the first purchase where you paid off the note, do you</p> <p>2 remember what the value of the boat was at that time?</p> <p>3 A. Well, the value of the boat is hard to tell.</p> <p>4 I'm sure there's records of how much I borrowed to pay</p> <p>5 off the boat, but off the top of my head I couldn't tell</p> <p>6 you how much I had paid in lease payments towards the</p> <p>7 purchase. And I believe it was at least a couple of</p> <p>8 years. So you know what. I don't even remember what</p> <p>9 our percentage of lease was. That's way too far back</p> <p>10 for me. I just can't remember that.</p> <p>11 Q. Have you ever had a valuation survey done on</p> <p>12 the boat?</p> <p>13 A. I believe so. I believe that when people do</p> <p>14 surveys, they do valuation and replacement value and</p> <p>15 stuff. I believe they do.</p> <p>16 Q. When you first had a valuation done on the</p> <p>17 boat, can you remember what the value of the boat was?</p> <p>18 A. I do not.</p> <p>19 Q. When was the last time you any valuation done</p> <p>20 on the boat?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you remember how much the boat valued out at</p> <p>23 the last time you had a valuation done on it?</p> <p>24 A. I do not.</p> <p>25 Q. Do you have an estimate as to the current value</p>
<p style="text-align: right;">95</p> <p>1 Q. When did you purchase the Point Loma?</p> <p>2 A. Does a lease purchase count?</p> <p>3 Q. I guess.</p> <p>4 A. Well, you're asking the question. I'm asking,</p> <p>5 does it count in your question?</p> <p>6 Q. Sure.</p> <p>7 A. In '92 or '93.</p> <p>8 Q. Did you start out leasing it; lease to own,</p> <p>9 basically?</p> <p>10 A. Yes.</p> <p>11 Q. And who did you buy it from?</p> <p>12 A. Well, the lease option, I guess you would call</p> <p>13 it, was with Dr. Aaron Kemp. Then I went to the bank</p> <p>14 where I bank and paid off what was still owed on the</p> <p>15 boat, because I think we counted half the lease payments</p> <p>16 towards the purchase. I forgot what the terms exactly</p> <p>17 are. But then I went to the bank and borrowed the rest</p> <p>18 of the money to pay off the boat, and then I sent him a</p> <p>19 check and paid off the boat, and then I owed the money</p> <p>20 to the bank.</p> <p>21 Q. Do you remember, when you started that lease</p> <p>22 purchase, what the value was of the boat in terms of if</p> <p>23 you had bought it outright?</p> <p>24 A. Not offhand.</p> <p>25 Q. When you borrowed money from the bank to make</p>	<p style="text-align: right;">97</p> <p>1 of the boat?</p> <p>2 A. I don't.</p> <p>3 Q. When was the last time the boat was surveyed,</p> <p>4 other than when we had it reviewed the other day?</p> <p>5 A. I don't remember. I'd have to check with the</p> <p>6 insurance company.</p> <p>7 Q. What's your best estimate of when that was</p> <p>8 done?</p> <p>9 A. I'm going to guess.</p> <p>10 MR. WALSH: Don't guess. If you don't know,</p> <p>11 don't guess.</p> <p>12 THE WITNESS: I don't know when it was.</p> <p>13 MR. POULOS: Q. Was it in the last five years?</p> <p>14 A. I'd be guessing.</p> <p>15 Q. Do you remember who did a valuation on it last?</p> <p>16 A. I do not. I just know that sometimes the</p> <p>17 insurance company did appraisals or surveys, or whatever</p> <p>18 they are, on the boat, and I guess they use that to see</p> <p>19 if they want to insure it, or something.</p> <p>20 Q. Have you maintained insurance on the boat</p> <p>21 continuously since the promissory note and mortgage were</p> <p>22 entered into?</p> <p>23 A. I've maintained insurance on that boat since I</p> <p>24 first got the boat.</p> <p>25 Q. So the answer is, yes?</p>

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	98		100
1	A. Yes. And before.	1	Q. That's it?
2	MR. WALSH: We will provide an insurance	2	A. I think so.
3	certificate, if that's the case. The insurance company	3	Q. What type of maintenance have you done on the
4	will give us the information.	4	vessel in the last year?
5	MR. POULOS: Q. Who was the insurance company?	5	A. I have not done any maintenance on it.
6	A. They change. Who is it today?	6	Q. Have you hired somebody other than Captain
7	Q. No, I know who it is today.	7	Kobak and the crew to do any maintenance on the vessel
8	A. Who is it today?	8	in the last year?
9	Q. I've got a certificate.	9	A. If there was any maintenance done -- I'm sure
10	A. They just changed it again. It's Chase now.	10	there was maintenance done -- but if there's any
11	Q. Who was it in the last two years; do you	11	maintenance done, that would be Captain Kobak's
12	recall?	12	responsibility and he would take care of it. If
13	A. No. Let's go before two years and I'll tell	13	something doesn't work on the boat, he fixes it or gets
14	you who.	14	a new one, whatever he needs to do. He knows that. And
15	Q. Tell me when the last time you know.	15	he just decides what he needs to keep it working right.
16	A. Pettit & Morey (phonetically) at Newport Beach.	16	Q. How much income did you receive from the
17	Now I think they're Chase Insurance Company. Same	17	fishing operations on the Point Loma in the last fiscal
18	place, same people, just a buyout thing.	18	year, so in 2007?
19	MR. POULOS: Q. Has Del Mar Seafoods, Inc.,	19	A. I thought I sent you all of the money.
20	been listed as an additional insured under all the	20	Q. Do you remember how much you've actually
21	insurance policies since the promissory note and	21	earned? Because, actually, it doesn't give us that.
22	preferred mortgage were entered into?	22	What it gives -- what you gave me, so the record is
23	A. I don't think so.	23	clear, you gave me at Mr. Cantrell's deposition a stack
24	Q. When was the last time the vessel was	24	of documents, and I'll put it on the record here in a
25	drydocked, if ever?	25	minute.
	99		101
1	A. If ever? You want to add that, really?	1	A. Which is the gross receipts for that.
2	Q. I'm adding that because I don't want to get an	2	Q. What I'm asking is the net.
3	objection that I'm assuming something. It's not meant	3	A. I have no idea.
4	to be derogatory. It's if it's ever been done.	4	Q. You have -- as the vessel owner, you receive 50
5	A. It's been done several times. More than	5	percent of the net income from the vessel after the
6	several times.	6	deduction of fuel and ice expenses; is that right?
7	Q. Do you recall when?	7	A. That's correct.
8	A. No, I don't.	8	Q. The other 50 percent goes to the crew; correct?
9	Q. Do you recall when the last time was?	9	A. Correct. And the captain.
10	A. No.	10	Q. Right. The captain. From the 50 percent that
11	Q. Do you recall whether it was in the last five	11	you receive, you have to pay for the dockage of the
12	years?	12	vessel; right?
13	A. I think it was more than five years.	13	A. Yes.
14	Q. Do you recall where it was done?	14	Q. How much is that?
15	A. It was either done in Channel Islands or in	15	A. It's \$1200. I don't know if that's monthly or
16	San Pedro, but I think Channel Islands.	16	once every two months. I'm not sure. But it has a
17	Q. I don't recall the exact words from Captain	17	place in San Francisco. So whatever the dockage charge
18	Kobak's deposition yesterday, but he described the	18	is, I forget, but I send them a check when I get the
19	vessel generally as being in an advanced state of	19	bill.
20	disrepair or deterioration. Do you agree with that?	20	Q. You pay for insurance from that 50 percent?
21	A. Well, I wouldn't know what he means by that, so	21	A. Sure.
22	how would I agree or disagree with it?	22	Q. How much is the insurance?
23	Q. How would you characterize the overall	23	A. In the neighborhood of \$25,000 a year.
24	condition of the vessel's hull presently?	24	Q. From that 50 percent, you pay for maintenance
25	A. It needs a paint job.	25	of the vessel; correct?

26 (Pages 98 to 101)

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1 A. You're saying it was July --
 2 Q. 20th.
 3 A. So a month and a half later?
 4 Q. Yes.
 5 A. You know more about it than I do, then. I
 6 didn't know those dates.

7 Q. Captain Kobak testified yesterday that he
 8 informed you of those dates when the loss occurred. Are
 9 you denying that he told you that?

10 A. I'm sure he did. I just don't remember the
 11 dates. I told you, to my best recollection, I thought
 12 it was a short time after the boat got arrested.

13 Q. Have you seen the claim that was submitted to
 14 the United States Marshal for the Northern District of
 15 California?

16 A. Have I seen the claim that what went to them?
 17 No. Not that I'm aware of.

18 Q. Have you seen a declaration prepared by Captain
 19 Kobak regarding the missing net?

20 A. I don't believe so.

21 MR. POULOS: Let's have this marked next in
 22 order.

23 (Whereupon, Exhibit 5 was
 24 marked for identification.)

25 THE WITNESS: Yeah, I don't remember seeing

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1 where it went. And he told me he went to the police
 2 department, dah-dah-dah-dah-dah-dah, and it's not
 3 around, and he talked to the harbor people and nobody
 4 touched it. And so it seems like it's stolen, that
 5 somebody took it without authorization.

6 So, since Del Mar had the boat arrested and
 7 they said it included all appendages, or whatever you
 8 call those things, appurtenances, and they considered
 9 the net one of the appurtenances that were arrested --
 10 because I know if anyone had tried to sell it, they
 11 would have had a fit because they would have said it was
 12 their net that had been arrested -- so I figure Del Mar
 13 was responsible for arresting the net along with the
 14 boat and they have to make it right.

15 Q. Were you aware that the net was never taken
 16 into possession by the U.S. Marshal?

17 MR. WALSH: Objection. Calls for speculation.

18 MR. POULOS: Q. Were you told that by Captain
 19 Kobak?

20 A. No.

21 Q. Were you aware that the boat -- that the net
 22 was not with the boat?

23 A. I was aware of that, but I don't think that
 24 precludes it from being under the control of the U.S.
 25 Marshal when they arrest the boat. And it said on the

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1 this. In fact, I'm sure I haven't.

2 MR. POULOS: Let's have this marked as exhibit
 3 next in order. 6.

4 (Whereupon, Exhibit 6 was
 5 marked for identification.)

6 MR. WALSH: Want to take a break?

7 THE WITNESS: Sure.

8 MR. WALSH: Yeah. I'm wiggling out here at the
 9 end of the day. Let's take five minutes.

10 THE WITNESS: Yeah.

11 MR. WALSH: Your next exhibit is the
 12 interrogatories?

13 MR. POULOS: Yeah.

14 MR. WALSH: Okay.

15 (Recess from 2:38 to 2:43)

16 THE WITNESS: We're back.

17 MR. POULOS: Q. What investigation did you do,
 18 if any, before you asserted a claim against Del Mar for
 19 loss of a fishing net to determine whether Del Mar was,
 20 in your mind, responsible for that loss?

21 A. Say that again.

22 Q. Sure. What investigation did you do before
 23 asserting a claim against Del Mar for loss of that
 24 fishing net?

25 A. Told the captain to see if he could find out

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1 paper all of its appurtenances, or whatever you call it,
 2 that were, which includes dah-dah-dah-dah net. In
 3 fact, Del Mar said it was their net. And so it got
 4 arrested; it got arrested. The net got arrested with
 5 the boat. It didn't matter if it was on the boat or
 6 not. It still got arrested because it's still part of
 7 the appurtenances.

8 Q. You were aware at all times -- at the time you
 9 asserted your cross-complaint that the fishing net was
 10 located at Pier 45, not at the Hyde Street Pier?

11 A. I knew it was at Pier 45. I don't know what
 12 the Hyde Street Pier is.

13 Q. You knew that's a different structure, though?

14 A. I don't know where the Hyde Street Pier is. I
 15 don't know; I don't know. I just know Pier 45 is where
 16 all the fish companies are. He told me he had it kind
 17 of in between two fish company places where he had
 18 permission to put the net.

19 Q. And he told you that he thought it had been
 20 stolen, possibly, by the crew of the Karen?

21 A. He told me several options.

22 Q. Was that one of them?

23 A. I believe it was the Karen that he mentioned --
 24 one of the boats.

25 Q. Did you look at Exhibit 6, I think, the

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<p>1 interrogatory responses?</p> <p>2 A. No, I just looked at 5.</p> <p>3 Q. Could you just take a look at that and tell me</p> <p>4 if these are your responses and your verification of the</p> <p>5 responses? There, a page towards the back.</p> <p>6 A. Yes.</p> <p>7 MR. WALSH: It's at the back. Just look at</p> <p>8 that.</p> <p>9 THE WITNESS: Okay. So what do you want me to</p> <p>10 do?</p> <p>11 MR. POULOS: Q. Are these the responses that</p> <p>12 you verified were true under penalty of perjury?</p> <p>13 MR. WALSH: I'll just stipulate the</p> <p>14 verification speaks for itself. It says that "based on</p> <p>15 information and belief, I believe the responses to be</p> <p>16 true," signed Barry Cohen. It looks like his signature.</p> <p>17 Is that your signature?</p> <p>18 THE WITNESS: That's my signature. Was -- I</p> <p>19 didn't think you wanted me to reread the whole thing.</p> <p>20 MR. POULOS: Q. Do you recall declaring under</p> <p>21 penalty of perjury in the Avila Beach litigation that if</p> <p>22 the attorneys' fees -- if you were not awarded</p> <p>23 attorneys' fees in that litigation, you might have to</p> <p>24 declare bankruptcy?</p> <p>25 A. I don't remember saying that, but there was a</p>	<p>1 they're handling the whole thing. I don't know what</p> <p>2 phase they're in. So far, all they did is get all the</p> <p>3 documents and talk to us about different things. And</p> <p>4 since that happened, we have never heard from Miller</p> <p>5 Starr again. So whatever they're doing, I don't know</p> <p>6 exactly at this moment. But Miller Starr has been put</p> <p>7 on notice. I know that for sure. Whether they</p> <p>8 officially filed or not, I don't know.</p> <p>9 Q. What law firm is representing you?</p> <p>10 A. It's in San Jose, and one of the attorneys is</p> <p>11 Maureen -- I forget her last name. Brad Jones. It's</p> <p>12 supposed to be a pretty big law firm. That's all they</p> <p>13 do -- is malpractice.</p> <p>14 Maureen and Brad, Brad Jones. I can't</p> <p>15 remember.</p> <p>16 Q. You have an AOL account; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And that's FishmanCohen@AOL.com?</p> <p>19 A. Correct.</p> <p>20 Q. How long have you had that e-mail address?</p> <p>21 A. Since I first got a computer.</p> <p>22 Q. How long ago was that?</p> <p>23 A. Boy, I don't know. It's been a while.</p> <p>24 MR. POULOS: Mark this as next in order.</p> <p>25 (Whereupon, Exhibit 7 was</p>
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<p>1 good chance of that.</p> <p>2 Q. It was true that there was a possibility of</p> <p>3 your declaring bankruptcy if you weren't able to recover</p> <p>4 your attorneys' fees; is that right?</p> <p>5 A. I'd say there was a possibility.</p> <p>6 Q. And you did not recover your attorneys' fees,</p> <p>7 did you?</p> <p>8 A. I don't know yet. It's not done.</p> <p>9 Q. The Court denied your motion for award of</p> <p>10 attorneys' fees; is that right?</p> <p>11 MR. WALSH: Objection. Calls for speculation,</p> <p>12 calls for a legal opinion.</p> <p>13 MR. POULOS: Q. I'm just asking for your</p> <p>14 understanding; I'm not asking you for a legal</p> <p>15 conclusion. Your understanding is that the trial court</p> <p>16 denied the motion for attorneys' fees? Now that's up on</p> <p>17 appeal.</p> <p>18 A. My understanding is the whole thing is not done</p> <p>19 yet.</p> <p>20 Q. In terms of the litigation?</p> <p>21 A. In terms of everything. Attorneys' fees,</p> <p>22 everything. It's all still up in the air.</p> <p>23 Q. Have you actually filed suit against Miller</p> <p>24 Starr for professional malpractice?</p> <p>25 A. Well, this law firm that we're working with --</p>	<p>1 marked for identification.)</p> <p>2 MR. POULOS: Would you take a moment to read</p> <p>3 Exhibit 7, please.</p> <p>4 MR. WALSH: By the way, do you have the</p> <p>5 original of this document?</p> <p>6 MR. POULOS: Yes, we do.</p> <p>7 MR. WALSH: The only reason I ask this question</p> <p>8 is it seems to be a funny copy with all kinds of dark</p> <p>9 streaks in it.</p> <p>10 MR. POULOS: I don't know why it copied that</p> <p>11 way. I know this is a document that's been copied quite</p> <p>12 a few times. Whether it's our copier or other</p> <p>13 function -- but we do have the original.</p> <p>14 MR. WALSH: I think I'd like to look at the</p> <p>15 original at some point.</p> <p>16 MR. POULOS: We can have it -- we don't have it</p> <p>17 here at the office. Joe has it and we can have it</p> <p>18 brought up here.</p> <p>19 MR. KELLEY: Do you want a clean copy? Maybe</p> <p>20 we have a clear copy somewhere.</p> <p>21 MR. POULOS: Or just give me couple more</p> <p>22 copies. This is fine. Here's the one -- okay. We have</p> <p>23 it.</p> <p>24 Q. Okay. Have you had a chance to look at this,</p> <p>25 Exhibit 7?</p>

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<p>1 A. Yes.</p> <p>2 (Cell phone interruption)</p> <p>3 (Recess from 2:56 to 2:59)</p> <p>4 THE WITNESS: I want to go home as early as I</p> <p>5 can. I'm tired.</p> <p>6 MR. POULOS: Q. We're getting there. Have you</p> <p>7 seen Exhibit 7 before?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Did you write Exhibit 7?</p> <p>10 A. I don't remember writing it. I don't remember</p> <p>11 writing it. I'm not saying I didn't. I just don't</p> <p>12 remember.</p> <p>13 Q. Do you on occasion write notes using the AOL</p> <p>14 e-mail program and then just print out the e-mail and</p> <p>15 send it by regular mail?</p> <p>16 A. You know, I do write things in there and I do</p> <p>17 print them out. I don't remember mailing them, but I'm</p> <p>18 not saying I didn't do this. I'm saying I really don't</p> <p>19 remember it. I don't know what else to tell you on</p> <p>20 that. I don't remember; I don't remember doing it.</p> <p>21 Q. Okay. Do you remember whether you were ill</p> <p>22 around this same time last year, January? I know you've</p> <p>23 got the flu now and I appreciate your coming up. I want</p> <p>24 that on the record. You know, you have done that and I</p> <p>25 appreciate it.</p>	<p>1 A. Wait. Say that again.</p> <p>2 Q. It's a copy of DMSI 0001. I have another copy</p> <p>3 with that number on it, just to --</p> <p>4 A. Your copier is screwed up.</p> <p>5 Q. Yes.</p> <p>6 A. This looks like the same one.</p> <p>7 MR. WALSH: I agree.</p> <p>8 MR. POULOS: Okay. So what we're looking at as</p> <p>9 Exhibit 8 --</p> <p>10 THE WITNESS: These two get mixed up.</p> <p>11 MR. POULOS: Q. What we're looking at as</p> <p>12 Exhibit 8 is a copy of what's also been produced under a</p> <p>13 Bates number from my office, No. DMSI 0001. I'm just</p> <p>14 putting that on the record. You can look at Exhibit 8</p> <p>15 because I think it's a cleaner copy.</p> <p>16 This is basically an expansion of the earlier</p> <p>17 schedule of payments that we looked at. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. So this takes that original document we looked</p> <p>21 at, which is Exhibit what -- what's the other exhibit,</p> <p>22 Barry, the exhibit number on that one?</p> <p>23 A. 1.</p> <p>24 Q. 1. So this takes Exhibit 1 and then shows some</p> <p>25 additional payments?</p>
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<p>1 This is about a year ago. Do you remember</p> <p>2 whether you were sick about a year ago?</p> <p>3 A. I was sick -- I was sick last year.</p> <p>4 Q. In the time frame -- this is dated January</p> <p>5 30th?</p> <p>6 A. You know, I see that. I can't be positive; I</p> <p>7 can't be sure. It's possible.</p> <p>8 Q. Do you remember telling Del Mar that you would</p> <p>9 try to send them at least \$2-\$3,000 a month?</p> <p>10 A. I would say that could very well be what I</p> <p>11 would say. I don't remember writing this; I don't</p> <p>12 remember saying this, but it's not far-fetched that I</p> <p>13 would say that.</p> <p>14 Q. Let's have -- we started to mark this before I</p> <p>15 mis-marked it. Could you put the stamp over this one so</p> <p>16 it's Exhibit 8.</p> <p>17 (Whereupon, Exhibit 8 was</p> <p>18 marked for identification.)</p> <p>19 THE WITNESS: That's different?</p> <p>20 MR. POULOS: Q. Right. Notice this one has</p> <p>21 the payments.</p> <p>22 A. Okay.</p> <p>23 Q. There's one for you, Bud.</p> <p>24 Looking at Exhibit 8, which I believe is a copy</p> <p>25 of DMSI 0001 --</p>	<p>1 A. No.</p> <p>2 Q. Doesn't it?</p> <p>3 A. No. There's one in between here.</p> <p>4 Q. But what this Exhibit 8 shows is that it does</p> <p>5 reflect three payments that you made on February 5th,</p> <p>6 February 20th, and April 25th of 2007. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And you agree you made those additional</p> <p>9 payments?</p> <p>10 A. I believe so. I didn't check it on my</p> <p>11 checkbook, but I made three payments.</p> <p>12 Q. Okay. And you recall making them early last</p> <p>13 year?</p> <p>14 A. Yes.</p> <p>15 Q. And the payment for \$2000 on February 5th -- do</p> <p>16 you recall if you mailed those payments in?</p> <p>17 A. Do I remember? No. Did I probably? Yes.</p> <p>18 Q. Okay. I'll represent to you that the Exhibit 7</p> <p>19 was sent to Del Mar accompanying the payment for \$2000</p> <p>20 dated February 5th, 2007. If you accept that, does that</p> <p>21 refresh your recollection that you may have in fact</p> <p>22 mailed this around that time?</p> <p>23 A. I can say it again. I don't remember doing</p> <p>24 this. There's nothing -- I can't think of how you would</p> <p>25 make my mind remember it. But I said it's possible I</p>

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<p style="text-align: right;">134</p> <p>1 MR. WALSH: Objection. I don't think it's been 2 established it's an e-mail. Whatever you want to call 3 it, piece of paper, I'm not sure it's an e-mail.</p> <p>4 MR. POULOS: On Exhibit 7 -- it's the same as 5 what's on the Exhibit 7, right?</p> <p>6 THE WITNESS: It's the same date on both of 7 them.</p> <p>8 MR. POULOS: Q. Okay. Does tying those two 9 things together -- the fact that the check is dated 10 January 30th and the Exhibit 7 is dated January 30th -- 11 does that help refresh your recollection as to whether 12 you are the author of Exhibit 7?</p> <p>13 A. No.</p> <p>14 Q. The next page is a check dated February 15th, 15 2007, for \$3,000. Is that right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And is that also a check that you wrote 18 on the Point Loma checking account to Del Mar Seafoods 19 for payment?</p> <p>20 A. Correct.</p> <p>21 Q. And when you wrote "on account," what account 22 were you referring to?</p> <p>23 A. This was on the note account.</p> <p>24 Q. And the same goes for the first page, where it 25 says "on account"?</p>	<p style="text-align: right;">136</p> <p>1 (Whereupon, Exhibit 11 was 2 marked for identification.)</p> <p>3 MR. POULOS: Q. That is the check for \$175,000 4 that you've testified about making; is that right?</p> <p>5 A. Correct.</p> <p>6 Q. And that was a check that you believe should 7 have been applied to the balance under the promissory 8 note; correct?</p> <p>9 A. Correct. And this is a copy of the check; not 10 the check.</p> <p>11 Q. Right. You delivered that check in person; 12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you first took it to Joe Cappuccio when he 15 was in his office; is that right?</p> <p>16 A. That's the only place I took it.</p> <p>17 Q. Didn't he tell you to take that over to Joe 18 Roggio?</p> <p>19 A. No.</p> <p>20 Q. So he accepted the check -- is your testimony?</p> <p>21 A. That's my testimony.</p> <p>22 Q. Can you tell me when that occurred, when you 23 actually handed that to him, that check?</p> <p>24 A. I can't say exactly, but it had to be very 25 close to that date. I don't think that I held onto it.</p>
<p style="text-align: right;">135</p> <p>1 A. Correct.</p> <p>2 (Discussion off the record)</p> <p>3 MR. POULOS: Q. You have the other \$3000 4 check?</p> <p>5 A. Yes. 4-23 is the date on it.</p> <p>6 Q. So the next page is the check dated 4-23 for 7 \$3,000?</p> <p>8 A. That's what I have.</p> <p>9 Q. Yes. Okay. That also is a check written on 10 your F/V Point Loma account signed by you; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you believe that those are the three checks, 13 then, that are reflected on Exhibit 8 as payments on 14 account?</p> <p>15 A. Say that again.</p> <p>16 Q. Do you believe that those, then, are the three 17 checks that are reflected on Exhibit 8?</p> <p>18 A. On this?</p> <p>19 Q. Yes, as payments on account.</p> <p>20 A. I believe they are.</p> <p>21 Q. Now, you had made -- at the heart of this case 22 is your payment of \$175,000; correct?</p> <p>23 A. Correct.</p> <p>24 MR. POULOS: Let's have that marked as Exhibit 25 11.</p>	<p style="text-align: right;">137</p> <p>1 I think I made it the day I gave it to him.</p> <p>2 Q. So you think you gave it to him on November 9th 3 of 2005?</p> <p>4 A. I believe so. But I want to correct one thing 5 because I just want this understood. I know for sure 6 that I handed this check to Joe Cappuccio, because when 7 I saw Joe Roggio I told him I want to give this to Joe 8 myself.</p> <p>9 I gave it to Joe Cappuccio. He looked at it 10 and said -- I said, "Here's the check that I said I 11 would give." He said, "Thank you very much." And I 12 said, "I'll pay you the rest as soon as I can." And he 13 said, "Well, I'm not worried about" -- "I'm not 14 concerned" or "not worried about it; it's such a small 15 amount now."</p> <p>16 After that point, I don't know; I don't 17 remember if he gave me back the check and I took it. I 18 don't remember that at all. So if somebody is saying 19 that's what happened, that may have been, because all I 20 remember very clearly in my mind is I handed him the 21 check because I knew it was important to him, and I know 22 he thanked me and said he wasn't worried about the rest 23 because I told him I would pay as soon as I can. He 24 said, "Whatever you can do, I'm not worried about it 25 anymore; it's such a small amount." After that point I</p>

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1 don't remember really. So if I took it or they're
 2 saying I took it to Joe Roggio, it's possible, but I
 3 don't remember that. That's for clarification.

4 Q. Fine. What else do you recall, if anything,
 5 about the conversation that you had with Joe Cappuccio?
 6 Was there more to it than that, or is that all that you
 7 remember?

8 A. I think that was the whole conversation.

9 Q. So I take it this whole exchange probably
 10 lasted less than a minute?

11 A. Maybe two. Yes, very short.

12 Q. And you don't remember, then, any conversation
 13 with Joe Roggio about this check because you don't
 14 remember whether you took it to him or not, so I'm
 15 assuming you don't remember a conversation?

16 A. I didn't think I took it to him, but I just got
 17 the feeling, because you asked that question, that maybe
 18 somebody said I did. And maybe somebody will remember
 19 something I don't. All I'm going to tell you is this is
 20 what I remember; that's what I don't remember. I
 21 thought I just left. If I took the check, if he said,
 22 "Take it to Joe Roggio," I don't remember that at all.

23 Q. Okay. And do you remember whether you had any
 24 subsequent -- on that day or others -- conversations
 25 with Joe Roggio about this payment?

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1 THE WITNESS: Want me to answer it again? Not
 2 the whole big dissertation I made; right?
 3 Joe Cappuccio asked me to do something like
 4 this.

5 MR. POULOS: Q. Did he specify the amount?
 6 A. No, he told me what the problem was, that he
 7 needed my help, and I said I would see what I could do.
 8 And this is what I could do.

9 Q. When was that conversation? I'm sorry. Did
 10 you say Roggio or Cappuccio?

11 A. Cappuccio.

12 Q. When did you have that conversation with Joe
 13 Cappuccio?

14 A. Of him asking me if I could help him do this?

15 Q. Yes.

16 A. I would guess -- my best estimate -- a couple
 17 of months before this check, because after he asked, I
 18 went home, talked to my wife about it and went about
 19 trying to get a second on the house. So, however long
 20 that took, that's when I did it. I didn't wait a month
 21 or two; I tried to do it when he asked me. And I told
 22 you why he said he needed it: Because the bank that he
 23 gets his credit line with was unhappy with that type of
 24 loan on his books.

25 And Joe Cappuccio -- what he said to me was the

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1 A. I don't know. I don't know in what context
 2 you're talking about. I gave the check to Joe. Is that
 3 what you mean?

4 Q. No. I just want to know what other
 5 conversations, if any -- and I'm not saying there were;
 6 I'm not saying there weren't. I'm asking you, did you
 7 have any other conversations or any conversations with
 8 Joe Roggio about this check that you remember? I don't
 9 want to hear at trial, "Oh, I remember I had a
 10 conversation with Joe." Tell me if you do or you don't.
 11 It's that simple.

12 A. I'm not going to do that. I don't remember any
 13 after. I don't know for how long a period of time
 14 you're talking. A week later, did I? I don't know. A
 15 week before? Yeah, I'm sure I did. I know I told Joe
 16 Roggio I was coming. He knew I was coming because I
 17 went to him first and said, "I made the check out and I
 18 want to give it to Joe myself," because I thought it was
 19 my place to do that. And pretty much, that's what I
 20 remember about the actual giving of the check.

21 Q. How did the giving of this check come about?
 22 Why did you give them -- let me rephrase.

23 Why did you give them a check for 175?

24 MR. WALSH: Objection. Asked and answered.
 25 You can answer it again.

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1 bank said: We're the bank and you're the fish company;
 2 we don't want to see those loans on your books when you
 3 borrow money from us. That's what he told me and it
 4 made sense. So I said, "I'll do what I can," and that's
 5 how this came about. And that's why I was so emphatic
 6 that it was for the note on the boat, because that was
 7 the whole purpose of doing this. They didn't ever say
 8 anything about receivables or this. That's why he had a
 9 line of credit -- to fund his receivables. What he told
 10 me is they just didn't like seeing that note that I had
 11 with them that Chris and I signed. And this was to pay
 12 down that note that much.

13 Q. Do you remember anything else about the
 14 conversation, besides what you've told me so far?

15 A. With Joe Cappuccio?

16 Q. Right.

17 A. That's the essence of it. I don't remember
 18 words verbatim, but he told me that the bank
 19 dah-dah-dah -- the things I just said, and this is the
 20 result of what he asked me to do.

21 Q. Okay. Do you recall -- you've mentioned a
 22 conversation you had with Joe Roggio before this payment
 23 was made in which you told Joe that you wanted to give
 24 Joe Cappuccio the check personally.

25 A. Yeah.

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1 Q. With respect to that conversation, do you
 2 remember anything else about that conversation besides
 3 you were just telling him I'm bringing the check and I
 4 want to give it to Joe Cappuccio myself?

5 A. No. Joe Roggio and I had conversations steady
 6 all the time. I just remember in this particular case I
 7 wouldn't know what we said ten minutes before, because
 8 it was not significant. This check was significant
 9 enough and I felt that I wanted to do it; I didn't want
 10 anybody else to do it. That's why I remember it.

11 Q. Okay.

12 A. And I remember going in his office and doing
 13 it, like I said.

14 Q. Do you remember any other conversations that
 15 you had specifically with Joe Roggio about making this
 16 payment, besides that one that you just told us about?

17 A. I don't know what you mean.

18 Q. Again, I'm just trying to make sure I know all
 19 the conversations that you remember. I'm not saying
 20 there were or there weren't. I'm just trying to
 21 understand.

22 A. In reference to giving Joe Cappuccio this
 23 check?

24 Q. Yes.

25 A. No, I don't remember any others.

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1 guess it's good not to have the bank unhappy with you.
 2 I felt like I was doing a good thing. That's all.
 3 Q. When did this conversation occur with Joe
 4 Roggio where he supposedly told you that if you could
 5 make this payment, he would make the loan interest-free?

6 A. He didn't say he would make it interest-free.
 7 He said he would see to it that it was interest-free.

8 When was it?

9 Q. Yes.

10 A. It was after I talked to Joe Cappuccio.

11 Q. The same day or a week later?

12 A. I thought it was right after.

13 Q. Same day, within minutes, or a short time
 14 after?

15 A. That would be my recollection.

16 Q. You said that you thought that the note already
 17 was interest-free.

18 A. Well, I did.

19 Q. The note you're talking about is the promissory
 20 note; right?

21 A. Right.

22 MR. POULOS: We might as well mark that as an
 23 exhibit.

24 (Whereupon, Exhibit 12 was

25 marked for identification.)

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1 Q. Or making the payment. You made the payment.
 2 Were there any conversations you remember about making
 3 this payment other than what you've told us so far?

4 A. Well, I don't know if this is what you mean.
 5 As far as giving this check, I only showed it to Joe
 6 Roggio. I said, "I want to give this to Joe myself,"
 7 and I walked in and did it.

8 Were there other conversations about me going
 9 to do this? Yes, there were, but that was not giving
 10 the check. That was prior to even having a check.

11 Q. What conversations were those?

12 A. I talked to Joe -- Joe Roggio talked to me
 13 after Joe Cappuccio told me about the bank. I thought
 14 Joe Roggio was at that meeting, but I corrected that
 15 when Joe said he wasn't there, because maybe he wasn't
 16 there. But Joe knew about it, because when I was in the
 17 hallway and I was with Joe, we were between the
 18 offices -- there's a little hallway right there -- and
 19 Joe said to me, "If you could do this, I'll see to it
 20 that the loan is interest-free." Well, I already
 21 thought it was interest-free, but okay, I'm going to do
 22 it anyhow. But I thought it was already interest-free,
 23 but he said it was, would be interest-free. So if
 24 that's what you mean, then that's one conversation that
 25 we had. I know Joe Roggio wanted to see it happen. I

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1 MR. POULOS: Q. Can you take a look at Exhibit
 2 12, please? That's the promissory note that you were
 3 just testifying about?

4 A. I believe so.

5 Q. That's your signature on the third page?

6 A. Yes, it is.

7 Q. And that's your wife's signature, Chris Cohen,
 8 on the last page?

9 A. Yes. My only question is if there was anything
 10 in between the first and the last page. I don't
 11 remember. But that is, in essence, what we signed.

12 Q. You read it before you signed it, I assume, did
 13 you?

14 A. Yeah, we read it, but it was -- it came with a
 15 narrative.

16 Q. We'll get to that in a second. You notice in
 17 the first paragraph it says the note is at 7 percent
 18 interest per annum?

19 A. Yes, I see that.

20 Q. Was there some narrative at the time this came
 21 to you that made you believe that that was not going to
 22 be the case?

23 A. Yes.

24 Q. What was that narrative?

25 A. That this was asked of us; it was not a

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1 requirement of us. This was not a requirement of my
 2 wife and I. We got nothing in return for this. We had
 3 already done everything we did, and what this -- the
 4 essence of what this is to memorialize the amount of
 5 money that I owed Del Mar; in the event that something
 6 happened to me, that there would not be a problem with
 7 my family or the kids claiming anything; that Del Mar
 8 would be covered by equity in the boat to get their
 9 money back on the money that they put up and we signed
 10 the note for.

11 Joe Roggio told me that this note -- he didn't
 12 have an attorney do it. All he did was he took an old
 13 note that they had and he changed the dates and the name
 14 and the amount. That's it, and that's all he did. So
 15 we don't have to go to, you know, a regular full -- he
 16 just took one out of the file for somebody else; this
 17 was somebody else's note. This was a copy, a changed
 18 copy of someone else's note. And it was explained to me
 19 this was to secure their position. They never even
 20 asked me for a payment. So that's why I thought it was
 21 what it was, because I was never asked for interest. It
 22 was to memorialize the things; it was not to make money
 23 on it.

24 You have to remember where this money came
 25 from. Joe was going to buy half the boat. He backed

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1 A. I can't answer that yes or no because it would
 2 be misleading. Because if I asked you to drive to the
 3 store and pick up something for me, do I have to
 4 specifically tell you to turn the key? No. We're going
 5 to assume if you're just going to drive to the store,
 6 you're going to turn the key.

7 Q. Did the word "interest" come up in that
 8 conversation?

9 A. We're going to argue this point. I told you
 10 what he told me. Do you want me to tell you again?

11 He told me -- I didn't say he told me anything
 12 about interest. He told me this was only to memorialize
 13 the thing. You can ask me any different way you want
 14 to. I told you exactly what he said. He didn't say
 15 anything else.

16 Q. I'm good with that.

17 A. Thank you.

18 MR. POULOS: Let's have this marked as next in
 19 order. Again, I just brought one copy.

20 (Whereupon, Exhibit 13 was
 21 marked for identification.)

22 MR. POULOS: I don't think this is
 23 controversial, either. Can you please confirm that that
 24 is the first preferred ship mortgage?

25 MR. WALSH: You don't need to worry about that.

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1 out. It's kind of hard to charge a guy interest when
 2 you back out of the deal. This was in case something
 3 happened to me, and that's what it was and that's what
 4 it is. And I guess everybody can change -- try to
 5 change what it is and was, but they can't.

6 Q. Did he specifically tell you don't worry, that
 7 he would not charge interest, at the time he gave you
 8 this note?

9 A. He just told me -- he didn't mention all the
 10 ramifications. He said this is only to memorialize the
 11 money. This is nothing more. There's nothing else
 12 behind it. Nothing. Period, amen. That's what he
 13 said.

14 You know what? I trust him. When you say it's
 15 to make sure in case something happens to me, to me
 16 that's fair. Had it been a stranger, I would have said
 17 cross all this stuff off. I thought I had a lifetime
 18 job with this company, the whole thing. So if he tells
 19 me -- he's my boss, too. If he tells me this is just to
 20 memorialize it, I believed him.

21 Q. My question to you is really just very
 22 specific. I need to be clear for this.

23 Did he tell you that he would not charge
 24 interest at the time he gave you this note; specifically
 25 that he would not charge interest? Yes or no?

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1 That's not your problem.

2 MR. POULOS: Q. Is that the first preferred
 3 ship mortgage that Del Mar has on the Point Loma?

4 A. Without reading, all the first page is my
 5 writing, and the last page is mine and Chris's
 6 signature. So if everything in here is according to
 7 page by page, then it is. I have no reason to doubt it.

8 Q. When did you separate from Chris Cohen for
 9 purposes of your marriage?

10 A. You mean physically or legally?

11 Q. Well, if you know, legally. I mean in some
 12 respects it calls for a legal conclusion. You may not
 13 know that.

14 A. That I don't know.

15 Q. So, physically, when she or you moved out of
 16 the house. I don't know which one and I don't really
 17 care.

18 A. Then I won't tell you. In January '07.

19 Q. Okay. Chris now lives in Arizona, correct?

20 A. Correct.

21 Q. Did she move to Arizona in January of '07?

22 A. No.

23 Q. When did she move to Arizona?

24 A. I don't remember.

25 Q. In your own mind, when you formally separated

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<p style="text-align: right;">150</p> <p>1 for purposes of the marriage, was that the January of 2 '07 when you said we're separated, we're getting a 3 divorce, whatever?</p> <p>4 A. Was that in my mind what?</p> <p>5 Q. Was that in January '07?</p> <p>6 A. Yes.</p> <p>7 Q. You think that was the date of separation?</p> <p>8 A. That's what I think. We didn't live together 9 anymore. That's what I would think that separation is.</p> <p>10 Q. Okay. Have you since that time period -- I 11 want to make a bright line in respects. After that 12 date, have you discussed this litigation with Chris 13 Cohen?</p> <p>14 A. I don't think so.</p> <p>15 Q. Have you corresponded with her; not through 16 your attorney, but have you personally corresponded with 17 Chris Cohen in writing or by e-mails about this 18 litigation since that bright line separation?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. Going to the other side of that bright line, so 21 during the marriage -- we have to make another bright 22 line for you -- I only want to know about communications 23 you had with Chris as a shareholder of the Point Loma 24 Fishing Company, Inc., okay, because you're 50-50 25 owners, right, in that business? Right?</p>	<p style="text-align: right;">152</p> <p>1 Q. So, a human resources job?</p> <p>2 A. Correct.</p> <p>3 Q. Did she have anything to do with the transfer 4 of inventory from the JV to the Olde Port Fisheries, 5 Inc.?</p> <p>6 A. No.</p> <p>7 Q. Did she have anything to do with agreements by 8 you to be responsible for the debts of Michael or 9 Leonard?</p> <p>10 A. The receivables?</p> <p>11 Q. Yes.</p> <p>12 A. She had nothing to do with any of those things.</p> <p>13 Q. Was Chris deposed in the Avila Beach 14 litigation?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Have you ever declared bankruptcy?</p> <p>17 A. No.</p> <p>18 Q. Have you ever consulted with a bankruptcy 19 lawyer about the possibility of declaring bankruptcy in 20 the last, say, five years?</p> <p>21 A. I talked to one about it.</p> <p>22 Q. And when was that?</p> <p>23 A. Several years ago; a couple years ago.</p> <p>24 Q. Was it around the time of the conclusion of 25 the -- well, it's not concluded -- around the time of</p>
<p style="text-align: right;">151</p> <p>1 A. Yes.</p> <p>2 Q. Did you have any discussions with Chris about 3 the payments that you were making to Del Mar on the 4 promissory note and preferred ship mortgage?</p> <p>5 A. To my best recollection, the only one I 6 discussed with her was the \$175,000. You want to ask me 7 if she liked it?</p> <p>8 Q. No.</p> <p>9 A. You're married, right?</p> <p>10 Q. Was Chris also an employee of Del Mar Seafoods 11 Olde Port Fisheries Division?</p> <p>12 A. The Avila Beach joint venture, as you call it?</p> <p>13 Yes.</p> <p>14 Q. And during what time period was she an employee 15 of that joint venture?</p> <p>16 A. Joe Roggio might know that better, but I think 17 from the beginning until the end of the joint venture.</p> <p>18 Q. What did she do as an employee; what was her 19 job?</p> <p>20 A. She worked with the employees and she did the 21 hire packets, terminations, Workers' Comp, all things to 22 do with employees. Personnel manager, I guess you call 23 it. And she worked with Joe on insurance things, like 24 the Workers' Comp. I don't know what else, what other 25 insurance.</p>	<p style="text-align: right;">153</p> <p>1 the motion for recovery of your attorneys' fees from the 2 Avila Beach litigation?</p> <p>3 A. It was before that. I went there to know where 4 I stood, only. It was like an exploratory visit -- know 5 what I'm trying say -- to find out how this worked. In 6 case anything happened where I had to really consider 7 it, I wanted to know what I would be up against. And so 8 that's what happened. He explained to me pretty much 9 how that works, which was a lot different than I 10 thought. And I consulted with him again when the boat 11 was arrested, only because I didn't know any other 12 attorneys, and him and I got along good, and I asked him 13 what should I do? And he talked about it and he 14 considered what he could do as a bankruptcy attorney. 15 He said, "But it's better to get involved with somebody 16 that knows maritime law." And I got in touch with Bud, 17 and Bud and him talked, and Bud said --</p> <p>18 MR. WALSH: Don't say anything about what I 19 said. You can tell what he said about bankruptcy 20 attorney, but don't tell them what I said.</p> <p>21 THE WITNESS: Bud and I are here.</p> <p>22 MR. WALSH: That's all you need to say. And 23 you haven't declared bankruptcy?</p> <p>24 THE WITNESS: Right.</p> <p>25 Q. The Point Loma Fishing Company, Inc., was a</p>

Exhibit 7

1 UNITED STATES DISTRICT COURT
2

3 NORTHERN DISTRICT OF CALIFORNIA
4

5 SAN FRANCISCO DIVISION
6

7 ---oo---

8 DEL MAR SEAFOODS, INC.,)
9 Plaintiff,)
10 vs.) No. C-07-2952-WHA
11 BARRY COHEN, CHRIS COHEN)
12 (aka CHRISTENE COHEN), in)
13 personam, and F/V POINT LOMA,)
14 Official Number 515298, a)
15 1968 steel-hulled, 126-gross)
16 ton, 70.8 foot long fishing)
17 vessel, her engines, tackle,)
18 furniture apparel, etc., in)
19 rem, and Does 1-10,)
20 Defendants.)
21

Condensed Transcript

J[G] Jane GROSSMAN
R[S] REPORTING Services

16 DEPOSITION OF JOSEPH ROGGIO

17 December 13, 2007

18
19 Taken before JANE GROSSMAN

20 CSR No. 5225

21
22
23 JANE GROSSMAN REPORTING SERVICES
24 Certified Shorthand Reporters
25 1939 Harrison Street, Suite 460
Oakland, California 94612
(510) 444-4500

DEPOSITION OF JOSEPH ROGGIO

1 A. I believe the -- October was the final month
2 that we started keeping track of the joint venture's
3 operations (sic).

4 Q. Okay. Now, to close the books -- who closed
5 the books?

6 A. I did.

7 Q. Of the Olde Port Fisheries Joint Venture;
8 correct?

9 A. Yes.

10 Q. Okay. Good.

11 Now, the next item, No. 1 -- do you see that?
12 It's:

13 "\$13,000 (sic) owed by Michael Cohen for
14 accounts receivables."

15 A. Correct.

16 Q. Who is Michael Cohen?

17 A. Michael Cohen is Barry's son and someone who
18 was operating his own fish business.

19 Q. And it says "for accounts receivables."

20 Tell me what that would have been.

21 A. Well, when we -- when the joint venture
22 stopped operating and there was, obviously, receivables
23 and payables that still existed, the \$13,920 was one of
24 those receivables that still existed when we closed down
25 the operation. It is one of the receivables that still

35

1 When the joint venture stopped maintaining its
2 books, these sales that were made to Michael Cohen and
3 to the restaurant, the Olde Port Inn Restaurant, they
4 were accounted for in profits and losses.

5 So, in essence, Barry's 50 percent share was
6 already accounted for in the -- by recognizing these
7 sales.

8 Q. Is that in some final wind-up document
9 relating to the joint venture?

10 A. It's debits and credits. It's accounting.

11 Q. There's no single wind-up document for the
12 joint venture; is that correct?

13 A. There's a final balance sheet and P-and-L
14 statement.

15 Q. Did you prepare it?

16 A. Dean prepared it up to September, and then we
17 let him go -- or whatever month Dean's last month was.

18 Then, obviously, there were still receivables
19 and payables that needed to get paid. And I took over
20 at that point.

21 Q. So, you're saying that despite the fact that
22 it was a 50/50 joint venture, the \$58,000 in advances
23 were not owed to the joint venture? They were owed only
24 to Del Mar, correct --

25 A. Well --

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1 existed.

2 Q. And so, he bought fish?

3 A. I'm assuming the joint venture sold fish, so
4 I'm assuming he bought fish.

5 Q. You're assuming?

6 A. I did not see those invoices. But my guess is
7 he purchased fish.

8 Q. I don't need your guess.

9 I need your best answer.

10 If you don't know, don't guess.

11 A. He purchased fish.

12 I don't want you to show me an invoice where
13 Barry sold him a piece of equipment because --

14 Q. I'm just asking what you know.

15 A. I'm not sure what they --

16 Q. You're not sure?

17 A. Well, I'm assuming it was fish, because that's
18 what we did.

19 Q. That's your answer. Thank you.

20 So, I guess what I don't understand is why, if
21 Del Mar and Barry Cohen were 50/50 joint venture
22 partners, all this money is owed to Del Mar.

23 Isn't it owed to the joint venture?

24 A. No, because the joint venture accounted for it
25 already in the profits and losses.

36

1 Q. -- if you know?

2 A. Yeah, they would be owed to Del Mar.

3 Q. Why if it was a 50/50 joint venture and you
4 were closing the books of the joint venture?

5 A. Because if they weren't collected, that means
6 the joint venture would be writing those amounts off,
7 which would increase the losses of the joint venture.

8 Q. Yes, but Barry gets the losses, too, doesn't
9 he?

10 A. Of course, he gets half the losses and half
11 the profits. But those were included in the profits.

12 Q. Do you know if you submitted the final P and L
13 statements that show all of these receivables?

14 A. Submit it to who?

15 Q. Of the joint venture.

16 A. Submit it to who?

17 Q. To us. Did you provide those in the
18 documents? Do you know?

19 A. I believe there's a balance sheet and income
20 statement in there that shows the month-to-month
21 activity for 2004.

22 Q. Now, I believe your position is that Barry
23 orally agreed to add these to his note; is that correct?

24 A. Correct.

25 Q. Never in writing?

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DEPOSITION OF JOSEPH ROGGIO

<p>1 A. Not in writing.</p> <p>2 Q. Okay. Were you aware that oral agreements 3 have a two-year statute of limitation?</p> <p>4 MR. POULOS: Objection.</p> <p>5 MR. WALSH: Q. If you know the answer to the 6 question --</p> <p>7 MR. POULOS: It calls for a legal conclusion.</p> <p>8 THE WITNESS: I -- I wouldn't know, but -- 9 well --</p> <p>10 MR. WALSH: Q. If you don't know, you don't 11 know.</p> <p>12 A. I don't know.</p> <p>13 Q. So, where are the joint venture's books now, 14 if you know?</p> <p>15 A. I'm assuming they're in Avila Beach.</p> <p>16 Q. Held by somebody else?</p> <p>17 A. I'm assuming they're still under Barry's 18 control.</p> <p>19 Q. Right. And did you review those books before 20 you looked over this document and signed it?</p> <p>21 A. I didn't have to. These were things that were 22 forwarded to me by Dean Smith.</p> <p>23 Q. These are just items that you got from some 24 other document?</p> <p>25 A. Well, they come from a general ledger of the</p>	<p>1 A. Well, it would be the profit-and-loss 2 statement.</p> <p>3 Q. The profit-and-loss statement?</p> <p>4 But if there are debts left over, was there -- 5 that's what you stated, I believe; right?</p> <p>6 A. There were outstanding receivable balances.</p> <p>7 Q. Was there a document that then allocated those 8 debts to each of you 50/50?</p> <p>9 A. Any documents? No, except for the documents 10 that substantiate these amounts.</p> <p>11 Q. So, we don't have anything that can show how 12 this \$58,000 shows --</p> <p>13 A. Sure, we do.</p> <p>14 Q. No. Let me finish.</p> <p>15 -- shows in relation to total allocations 50/50 16 of the joint venture, do we?</p> <p>17 MR. POULOS: Vague and ambiguous.</p> <p>18 I'm not sure I understand the question from an 19 accounting standpoint.</p> <p>20 MR. WALSH: He's the accountant.</p> <p>21 If he can answer the question --</p> <p>22 THE WITNESS: These amounts are included in 23 the profit and losses of the joint venture accounting 24 records. They're already accounted for. They have just 25 not been collected.</p>
<p>39</p> <p>1 Avila Beach Joint Venture accounting records.</p> <p>2 Q. So, it's your position that Del Mar is owed 3 100 percent of this in the final accounting, correct -- 4 100 percent of the 58,000?</p> <p>5 A. Again, I'd have to see the balance sheet and 6 the income statement and see how this 58,000 number is 7 -- I just don't recall.</p> <p>8 Q. So, you're not sure, as we sit here today?</p> <p>9 MR. POULOS: I'm not sure what the question 10 is.</p> <p>11 The \$58,000 is as broken down here, if that's 12 what the question is?</p> <p>13 THE WITNESS: Yes, this is the break-out of 14 the \$58,000; right?</p> <p>15 MR. POULOS: That's what it -- yeah. I mean, 16 if you --</p> <p>17 THE WITNESS: Yeah.</p> <p>18 MR. POULOS: -- you add these up --</p> <p>19 THE WITNESS: And my understanding is that 20 that \$58,000 is owed to Del Mar Seafoods.</p> <p>21 MR. WALSH: Q. Okay. Fine. That's the 22 answer to my question.</p> <p>23 So, where are the documents that show how the 24 50/50 allocation was done at the end of the joint 25 venture? Do you know?</p>	<p>41</p> <p>1 So, it's just like if we had a receivable from 2 American Fish Company. If they pay that receivable 3 after we set down the joint venture, it would come to 4 Del Mar Seafoods.</p> <p>5 MR. WALSH: Q. Why?</p> <p>6 A. Because it was already recognized in the 7 profit and losses.</p> <p>8 Q. But if it's already been -- if everything has 9 already been recognized in the profit and losses --</p> <p>10 A. You're assuming that we wrote these amounts 11 off, but we didn't. I think that's where the confusion 12 is here. These amounts were not written off.</p> <p>13 Q. No. I'm trying to understand how you can say 14 that these advances --</p> <p>15 A. They're not advances --</p> <p>16 Q. Let me finish the question.</p> <p>17 It says:</p> <p>18 "The advances were as follows: 19 "...to close the books of the Olde Port 20 Fisheries joint venture," and it's 21 \$58,000.</p> <p>22 How can you calculate, in a 50/50 joint 23 venture, that that was owed exclusively to Del Mar -- 24 how did you determine that?</p> <p>25 Why isn't he owed half of that? Why shouldn't</p>

1 he collect 50 percent from his own son?
 2 MR. POULOS: Asked and answered.
 3 THE WITNESS: Yeah, I think I answered that
 4 several times.
 5 MR. WALSH: Q. Because it's in the books of
 6 the joint venture?
 7 MR. POULOS: No, because it's asked and
 8 answered.
 9 MR. WALSH: Q. You can answer the question.
 10 A. I believe I did.
 11 Q. You have nothing further to add?
 12 A. Except for these amounts, again, were included
 13 in the profits and losses of the joint venture.
 14 Q. As of October 2004; correct?
 15 A. Correct.
 16 Q. Okay. Did you ever send, in October or after
 17 October 2004, a notice in writing to Mr. Cohen that he
 18 owed these items and explain why he owed them?
 19 A. I discussed them with Barry. And he said to
 20 add them to his balance.
 21 Otherwise, I would have gone after the
 22 individuals who owed that money.
 23 MR. WALSH: Move to strike as nonresponsive.
 24 Q. Did you ever write a letter to Mr. Cohen
 25 outlining that these are the amounts that are owed to

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1 When Barry came to work for us, he was selling
 2 fish to Michael Cohen for him to sell at his -- at the
 3 retail in Avila Beach.
 4 Q. Okay.
 5 A. Okay?
 6 Q. Okay.
 7 A. And I believe that amount there is the
 8 receivables that Michael Cohen owed to Del Mar Seafoods.
 9 Q. Okay. So, this is a debt --
 10 A. Outside of the joint venture.
 11 Q. -- outside of the joint venture by a different
 12 person, Michael Cohen; correct?
 13 A. Well, a different person than who?
 14 Q. Than Barry.
 15 A. Yeah.
 16 Q. And so, Michael owes this to Del Mar; correct?
 17 A. Correct.
 18 Q. It had nothing to do with the Olde Port
 19 Fisheries Joint Venture?
 20 A. It does not.
 21 Q. Okay.
 22 A. But it is an amount that Barry agreed to pay.
 23 Q. In writing?
 24 A. Not in writing.
 25 Q. How about Michael Cohen; did he agree to pay

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1 the joint venture?
 2 A. No.
 3 Q. Did you ever write a letter to Chris Cohen
 4 outlining that these were the amounts owed to the joint
 5 venture?
 6 A. No.
 7 MR. POULOS: I object that the question
 8 mischaracterizes the testimony.
 9 He didn't testify that they were amounts owed
 10 to the JV.
 11 He testified they were amounts owed to
 12 Del Mar.
 13 MR. WALSH: Q. "(b) \$7,417 (sic) owed for
 14 accounts receivables..."
 15 What are those amounts -- what is that amount?
 16 Can you explain it further?
 17 A. Can we look at my schedule?
 18 Q. You don't recall, as we sit here?
 19 A. I do recall. I do recall, but I don't know
 20 where it falls on the spreadsheet.
 21 I believe those are -- when Barry came to work
 22 for us, he was selling fish -- my understanding is when
 23 we pulled out of the Avila Beach Joint Venture,
 24 Michael Cohen had taken over and was continuously
 25 running the retail market in Avila Beach.

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1 it in writing?
 2 A. Well, I think our invoices stipulate that he
 3 owes that amount.
 4 Well, Michael Cohen -- this is --
 5 Q. He didn't sign a piece of paper, did he?
 6 THE WITNESS: (Addressing Mr. Poulos) Can I
 7 elaborate?
 8 MR. POULOS: Just answer his question.
 9 MR. WALSH: Q. You can just answer my
 10 question. He can clarify it later, if he wants to.
 11 A. We don't have any of our customers verify in
 12 writing that they owe us the money.
 13 We sell them something, and we send them an
 14 invoice.
 15 Q. Okay. How about (c), expenses --
 16 Well, before we leave (b), do you know the
 17 dates of those accounts receivables?
 18 A. No, but I can find those out.
 19 Q. Was it after 2004 or before?
 20 A. I would believe it would be after.
 21 Q. With regard to that amount, have you ever
 22 filed suit against Michael Cohen to recover those
 23 accounts?
 24 A. I called him on several occasions.
 25 Q. The question is, Did you file a lawsuit to

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DEPOSITION OF JOSEPH ROGGIO

1 Q. I see. So, after you prepared it, you never
2 looked at it again; is that fair to say?
3 MR. POULOS: Mischaracterizes his testimony.
4 THE WITNESS: I can't say that. I'm sure I
5 looked at it before (sic).
6 MR. WALSH: Q. Well, I guess the question
7 more specifically is, Before you talked to the lawyers,
8 did you look in the provisions of the ship mortgage with
9 regard to what your possible remedies were?
10 A. I forwarded the document to the attorney
11 and --
12 Q. I see.
13 MR. POULOS: I'm going to move to strike.
14 You're crossing into that line of
15 attorney-client communications.
16 MR. WALSH: Q. I don't want to know about
17 that.
18 MR. POULOS: He's asking a very specific
19 question, which is: Before you ever got lawyers
20 involved, but at the time that you were thinking of
21 sending it to lawyers, did you pull this out and read
22 the document? Yes or no?
23 THE WITNESS: No.
24 MR. POULOS: Okay.
25 THE WITNESS: I did not.

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1 Q. And before you asked the lawyers to have the
2 vessel arrested, did you read this note over to find out
3 what your remedies were?
4 A. No, I did not.
5 Q. Now, has this promissory note ever been
6 amended in writing that you know of?
7 A. No.
8 MR. WALSH: Why don't we take a short break?
9 Then what I would like to do is to go until
10 1:00 and then take a lunch break.
11 THE WITNESS: I would like to keep moving
12 along.
13 MR. WALSH: We'll just take a short break.
14 Then we'll go until 1:00, and we'll have a half-hour
15 break for lunch.
16 Off the record.
17 (Recess taken: 12:04 p.m. until 12:15 p.m.)
18 MR. WALSH: Q. So, let's set aside this note
19 for now.
20 Let's talk about balance sheets.
21 (Deposition Exhibit 6 was marked for
22 identification.)
23 MR. WALSH: Q. If you could, look over this
24 document.
25 MR. POULOS: Is this Exhibit 6?

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1 MR. WALSH: Q. Okay.
2 MR. POULOS: I move to strike his prior answer
3 as inadvertent disclosure of attorney-client
4 communications.
5 MR. WALSH: I don't think we learned anything.
6 MR. POULOS: I'm just protecting my record.
7 MR. WALSH: This is the next one.
8 (Deposition Exhibit 5 was marked for
9 identification.)
10 MR. WALSH: Q. Now, if you could, look this
11 over, Mr. Roggio, and when you're finished looking it
12 over, let me know.
13 A. Okay.
14 Q. Is this the promissory note we've been
15 discussing?
16 A. Yes, it is.
17 Q. And this is the one that is secured by the
18 first preferred ship mortgage; is that correct?
19 A. Yes.
20 Q. Did you draft this?
21 A. Well, I mean, yes -- yes, but it was
22 originally drafted by somebody else that we had a
23 preferred ship mortgage with -- another vessel.
24 Q. So, you just copied it?
25 A. Basically.

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1 MR. WALSH: This is Exhibit 6.
2 Q. I'll tell you that this document was produced
3 to us by your attorneys in response to our Request for
4 Production of Documents.
5 MR. POULOS: Actually, I believe this was part
6 of the initial disclosures, based on the Bates
7 numbering.
8 MR. WALSH: Correct. Well, whatever. You
9 gave it to us.
10 Q. An accountant yawning at figures. I thought
11 this would be where you would wake up.
12 A. And get all excited?
13 Q. Can you tell me what these documents are, if
14 you know?
15 A. Well, this is a balance sheet --
16 Q. Right.
17 A. -- and income statement -- excuse me.
18 Balance sheet, balance sheet. It's from the
19 books of the joint venture.
20 MR. POULOS: Let's break this down because
21 there are seven pages here, I guess.
22 MR. WALSH: We'll go through each page.
23 Q. Generally describe them.
24 MR. POULOS: As you are looking at it -- you
25 just said "Balance sheet, balance sheet."

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1 Q. Well, if, as you say, you and Barry discussed
2 about how to allocate it and then you prepared this
3 document, then you must have had a second meeting after
4 that, giving him a copy of the document.

5 Is that what happened? Do you know? Do you
6 recall?

7 MR. POULOS: Argumentative; asked and
8 answered.

9 MR. WALSH: Q. You can answer the question.

10 A. Barry -- we talked about who owed what. And
11 he asked if he can get a schedule of who owed what.
12 That was one meeting we had.

13 Then when the payment was made, obviously we
14 talked about how it was going to be allocated. That was
15 another meeting.

16 And then when he received this copy, I guess
17 you can say that was probably a third meeting.

18 And we probably had many other meetings about,
19 you know, the additional payments that he was making
20 after that.

21 Q. So, the ending balance is how much?

22 A. On this document that you are showing me, it's
23 \$11,884.70.

24 Q. Okay. One thing about this is that each of
25 these totals at the top are the -- are the amounts owed,

1 Q. But you didn't discuss interest with regard to
2 the preparation of this document. How come?

3 MR. POULOS: Asked and answered.

4 THE WITNESS: Yeah, we just didn't. He didn't
5 ask; I didn't ask. It just wasn't something that was
6 discussed when this document was created.

7 This document was created so that he had an
8 understanding of what he would need to collect from his
9 kids, since he made the payments on their behalf.

10 MR. WALSH: Q. Well, that doesn't make sense
11 because Barry is not going to collect from his kids what
12 he owes, is he?

13 A. He's going to collect from his kids what they
14 owe.

15 MR. POULOS: Objection. Argumentative.

16 (Addressing the witness) But you can answer.

17 MR. WALSH: Q. But this document includes
18 what he owes, not just what his sons owe, doesn't it?

19 A. Yeah, of course.

20 Q. Okay. Right. So, in fact, you're telling him
21 what he owes, aren't you?

22 A. Along with what his kids owe.

23 Q. Right, exactly.

24 A. Yes.

25 Q. And you didn't calculate any interest in

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1 but there doesn't seem to be any interest involved here.
2 You don't identify interest. You don't identify it as
3 being paid to anything but principal.

4 Can you clarify that?

5 A. Just that the interest was going to be
6 calculated at the end of the note. We didn't accrue the
7 interest on the books month to month. At the end of the
8 note, then the interest would come due.

9 Q. At the end of the note?

10 A. Well, when he made the final payment, then I
11 would have told him what the interest balance was, which
12 we had discussed. And I had showed him another schedule
13 that had the interest on there.

14 Q. But there's none on this one --

15 A. There's none on this one.

16 Q. -- correct?

17 A. Correct.

18 Q. Right. So, you're saying you guys did a
19 separate agreement that said he didn't have to pay
20 interest until the end of the note?

21 A. No, I didn't say that.

22 Q. What did you say?

23 A. I said that I created another document that
24 had the interest amounts that were due that I showed
25 Barry.

1 there, did you?

2 A. In this document, no.

3 Q. But, yet, you were purporting to tell him what
4 his kids owed and what he owed as of that date; is that
5 correct?

6 A. I mean, I -- when this document was created --
7 the purpose, again, of this document was to create a
8 document for him to know what his kids owed him.

9 And, yes, I did include the amounts that he
10 owed also on this same document.

11 Q. Absolutely you did, didn't you?

12 A. Yes. And it does not include interest.

13 Q. That's right. It doesn't, does it?

14 MR. POULOS: Well, let him finish, Mr. Walsh.

15 THE WITNESS: That doesn't mean -- there was a
16 separate document that I had given him that did include
17 the interest.

18 (Off-the-record discussion between the witness
19 and his counsel.)

20 MR. WALSH: Let's go to the next document.

21 (Deposition Exhibit 21 was marked for
22 identification.)

23 MR. WALSH: Q. So, Mr. Roggio, can you tell
24 me about this document?

25 MR. POULOS: Objection. It's a

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1 Q. Okay. So, "Olde Port Balance" -- do you see
2 that at 12/5/2006. Do you see that?
3 A. Uh-huh.
4 MR. POULOS: You've really got to watch the
5 "uh-huhs."
6 THE WITNESS: Yes.
7 MR. WALSH: Q. That was put on after you
8 created this instrument, sometime --
9 A. Yes.
10 Q. -- around the time that he made the \$175,000
11 payment; is that correct?
12 A. Yes.
13 Q. Is that related at all to the joint venture
14 agreement?
15 A. No.
16 Q. What does that comprise?
17 A. That is when Barry was employed by just
18 Del Mar Seafoods, outside of the joint venture, he was
19 selling fish to Olde Port Fisheries, which was being run
20 by his son. And that was a receivable balance that he
21 incurred with Del Mar Seafoods.
22 And I tried collecting that money from
23 Michael. And he said, "Go see my dad."
24 So, I proceeded to see Barry.
25 And Barry said he will (sic) take care of it;

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1 Q. Did you have any conversation with Chris Cohen
2 as to whether she was willing to have the note amended
3 and have that amount added to the note?
4 A. No.
5 Q. The next item, "Point Loma Balance," what's
6 that?
7 A. When Barry's boat started fishing for just
8 Del Mar Seafoods, he was taking fuel, ice, and other
9 advances. And when he was delivering fish, we were
10 deducting those to his charges that he put on our
11 accounts. And when he stopped fishing for us, that was
12 the leftover balance.
13 Q. How about the "Fees for Olde Port Case"?
14 MR. POULOS: What about them?
15 MR. WALSH: Can you wait until I --
16 MR. POULOS: Sure.
17 MR. WALSH: Q. Why do they get added to this
18 schedule?
19 A. Because they were discussed with Barry.
20 And, again, he was taking responsibility for
21 those fees that were incurred for his -- you'll have to
22 ask him -- for his case with the Avila Beach Port --
23 with the Port of Avila Beach.
24 Q. Who had the discussion with him about these
25 fees?

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1 add it to his balance.
2 Q. When did this conversation with Barry occur?
3 Do you recall?
4 A. On or around December 5th of 2006, when it was
5 put on the schedule.
6 Q. Okay. The term used was "balance" again,
7 right, as you recall?
8 A. Well, it was -- I don't recall the exact word
9 used, but it was clear that Barry was going to take
10 responsibility for it.
11 Q. But you don't recall that he said, "I agree to
12 add it to the note and the ship mortgage"?

13 MR. POULOS: In those specific terms?
14 MR. WALSH: That's my question.
15 THE WITNESS: I know he specifically -- and he
16 was very clear about it -- said that he was going to
17 take care of it.
18 MR. WALSH: Q. Did he say, "I'm willing to
19 add it to the note and the ship mortgage"?

20 A. I don't recall if he used those words.
21 Q. You don't recall, or he didn't?
22 A. I don't recall.
23 I don't know what words exactly he used except
24 for that it was clear that he was taking responsibility
25 for it.

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1 A. I did.
2 Q. And these were -- whose fees were they?
3 A. Our attorneys' fees in order to support and
4 help Barry defend his case with the Port of Avila Beach.
5 Q. Were you a party to the case?
6 A. I was depoled (sic) in that case and testified
7 in that case.
8 Q. But as far as you know, you weren't sued, were
9 you?
10 A. We were not sued.
11 Q. So, you weren't a party to the case is your
12 understanding?
13 You don't need to look at him. It's what you
14 know.
15 MR. POULOS: To the extent you have an
16 understanding of what your legal relationship was to the
17 case is what he's asking you about.
18 Do you know?
19 THE WITNESS: I don't.
20 MR. WALSH: Q. You don't recall that your
21 company had been sued?
22 A. Del Mar Seafoods, no, was not.
23 Q. No, it was not sued.
24 So, these are the fees related to the
25 depositions?

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<p>1 A. No.</p> <p>2 Q. What were they related to?</p> <p>3 A. I'd have to go back and look at the bills. I 4 mean, I don't know.</p> <p>5 Q. You don't know. Okay.</p> <p>6 And so, Barry agreed to pay your legal fees 7 because of the participation of Del Mar in the case; is 8 that correct?</p> <p>9 A. I don't think it had anything to do with 10 defending Del Mar in this case.</p> <p>11 I think it had to do with helping Barry or 12 helping support Barry's case against the Port.</p> <p>13 Q. Did he -- what exactly was his agreement with 14 regard to -- what did he get in return for paying your 15 legal fees?</p> <p>16 A. I wasn't that involved in the case. I don't 17 know.</p> <p>18 Q. But you were subpoenaed to appear in the case, 19 and you had to give a deposition by law.</p> <p>20 What did Barry get out of your participation 21 in the case?</p> <p>22 Did he get any monetary benefit?</p> <p>23 MR. POULOS: Objection. Asked and answered.</p> <p>24 MR. WALSH: Q. If you know.</p> <p>25 A. I wasn't there.</p>	<p>1 receiving these bills. And I recall going into his 2 office and telling him that, "We're not going to be 3 responsible for these," that, "you are going to be 4 responsible for those."</p> <p>5 Q. Was he your employee at that time?</p> <p>6 A. Yeah, he was.</p> <p>7 Q. So, you gave him no choice?</p> <p>8 A. There --</p> <p>9 MR. POULOS: Objection. Argumentative.</p> <p>10 MR. WALSH: Q. You can answer the question.</p> <p>11 A. It wasn't an employment -- employer/employee 12 relationship discussion. This had nothing to do with 13 his employment with Del Mar Seafoods.</p> <p>14 Q. Did you get any kind of written agreement?</p> <p>15 A. No.</p> <p>16 Q. Let's go to the next item, "Payment."</p> <p>17 Actually there are three of them there. These are all 18 payments; right?</p> <p>19 A. Yes.</p> <p>20 Q. So, as of April 30, 2007, Barry owed 21 \$128,749.79; is that correct?</p> <p>22 A. I'm sorry. As of what date?</p> <p>23 Q. It looks like 4/30/2007 --</p> <p>24 A. Yes.</p> <p>25 Q. -- when you printed this out.</p>
<p>123</p> <p>1 I don't know what he got.</p> <p>2 Q. So, tell me exactly what he said when he 3 agreed to take on what was your debt.</p> <p>4 That's right? This was your debt to your 5 lawyers; right?</p> <p>6 MR. POULOS: Del Mar, you mean?</p> <p>7 THE WITNESS: Yes. They billed Del Mar 8 Seafoods.</p> <p>9 MR. WALSH: Q. So, it was Del Mar's debt?</p> <p>10 A. A lot of the conversations in those bills were 11 between Barry and Del Mar's attorney.</p> <p>12 Q. But the law firm billed you; correct?</p> <p>13 A. Well, yeah. Yeah, they did because they 14 wanted to get paid.</p> <p>15 Q. Did you pay them?</p> <p>16 A. Yes.</p> <p>17 Q. Del Mar paid them?</p> <p>18 A. Yeah.</p> <p>19 Q. So, it's Del Mar's debt to the attorneys that 20 were paid.</p> <p>21 Tell me about your conversation with Mr. Cohen 22 where he said, "Yes, I will pay your legal fees." Tell 23 me about that conversation. When was it held?</p> <p>24 A. I don't know when it was held, but it was 25 obviously held during the time that Del Mar was</p>	<p>125</p> <p>1 Did you give this to Barry?</p> <p>2 A. Well, I know Barry -- at what point of this 3 spreadsheet was it given to Barry? I don't know.</p> <p>4 But Barry has definitely got this spreadsheet.</p> <p>5 I mean, was it at, you know, this part of the 6 spreadsheet? Was it at this part of the spreadsheet? I 7 don't know.</p> <p>8 Q. This particular document, do you recall ever 9 giving it to Barry Cohen?</p> <p>10 A. Yeah.</p> <p>11 Q. When?</p> <p>12 A. Oh, you're talking about with all of these 13 items on it (indicating)?</p> <p>14 Q. Yes, this particular one on it (indicating).</p> <p>15 MR. POULOS: This one with the handwriting?</p> <p>16 MR. WALSH: Q. Yes, the one with the 17 handwriting on it.</p> <p>18 A. Oh, no, not with the handwriting on it.</p> <p>19 Q. Did you mail it to him with a cover letter?</p> <p>20 A. No.</p> <p>21 Q. Did you mail a copy of this to Chris Cohen 22 with a cover letter?</p> <p>23 A. No.</p> <p>24 Q. Did you ever write a letter demanding that he 25 make this payment?</p>

1 A. No.	1 MR. WALSH: For the record, I'll identify it
2 MR. POULOS: Which payment?	2 as something entitled "ASSIGNMENT OF JOINT VENTURE
3 MR. WALSH: The \$128,749.	3 INTEREST."
4 Q. Is the answer still no?	4 Q. The date at the top, 22nd October, 2004 -- do
5 A. Uh-huh.	5 you see that?
6 MR. POULOS: That's a "yes"?	6 A. Yes.
7 THE WITNESS: Yes.	7 Q. That seems to coincide with about the time
8 MR. WALSH: Q. With regard to these amounts	8 the joint venture was dissolved, so to speak; right?
9 at the top, except for Barry, these beginning	9 A. Yes.
10 balances -- those all go back to the joint venture, is	10 Q. Is that your signature on page 2?
11 that correct? The 13,000, 18,000, 10,000, the 16-, they	11 A. Yes.
12 all go back to the joint venture books; correct?	12 Q. And that Mr. Cohen's?
13 MR. POULOS: Wait a minute.	13 A. Yes.
14 (Addressing the reporter) Can I have that	14 Q. What is your recollection as to the purpose of
15 question read back?	15 this particular assignment?
16 (Whereupon, the record was read as follows:	16 A. Without knowing all the ins and outs of the
17 "Question: With regard to these amounts	17 legal (sic), that basically Del Mar was assigning its
18 at the top, except for Barry, these	18 interest in the joint venture, but not its -- yeah, its
19 beginning balances -- those all go back to	19 interest, but not its rights.
20 the joint venture, is that correct? The	20 Q. So, your understanding of this document is
21 13,000, 18,000, 10,000, the 16-, they all	21 that it assigns an interest, but not its rights?
22 go back to the joint venture books;	22 A. Yeah.
23 correct?"	23 Q. Have you read -- have you read paragraph 2?
24 MR. POULOS: Objection. Argumentative; asked	24 A. Yeah.
25 and answered; mischaracterizes prior testimony.	25 Q. I'll read it for the record.

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1 MR. WALSH: Q. You can answer the question.	1 A. Yeah. Do you mean D.?
2 A. Yes. They were funded by Del Mar Seafoods.	2 Q. Tell me if I am correct in reading this.
3 Q. So, presumably all of these were before --	3 "ASSIGNMENT: Assignor --" which is
4 correct me if I am wrong -- 12/28/2004, when you made a	4 Del Mar; correct?
5 \$5,000 payment.	5 A. Uh-huh.
6 A. Yeah -- yes.	6 Q. -- "hereby confirms and reaffirms its
7 Q. Okay. Then he made the \$175,000 payment, it	7 prior assignment and transfer to Assignee
8 looks like, November 10th, 2005; is that correct?	8 to the fullest extent possible and without
9 A. Yes.	9 restriction, all of Assignor's entire
10 Q. Is there any item for interest in this	10 interest in the Joint Venture, including
11 document that you can point to?	11 but not limited to the Joint Venture's
12 A. No.	12 claims, if any, against the District, and
13 This document related to the principal only --	13 including without limitation all rights,
14 the principal balances only.	14 entitlements and/or interests in and to
15 MR. WALSH: Let's mark this as the next	15 any claims, rights of action, causes of
16 document.	16 action, recoveries, damages or other legal
17 (Deposition Exhibit 22 was marked for	17 recourse owned or held by the Joint
18 identification.)	18 Venture."
19 MR. WALSH: Q. If you could, look over this	19 Did I read that correctly?
20 document, and then tell me when you are ready. Then	20 A. You read what was on the piece of paper.
21 I'll ask you some questions about it.	21 Q. But I read it correctly?
22 A. I'm ready.	22 A. Yes.
23 Q. Mr. Roggio, have you seen this document	23 Q. So, your answer that this assignment did not
24 before?	24 transfer your right -- the rights of Del Mar, do you
25 A. Yes, I have.	25 still think that's a correct statement?

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1 Your question was argumentative.
 2 (Addressing the witness) He's got a new
 3 question pending now.
 4 THE WITNESS: Our discussions were like I
 5 told you at the very beginning of this deposition: It
 6 was that Barry was encumbered with debts, and we were
 7 concerned about our interest or the funds that were owed
 8 to Del Mar Seafoods. That's what we discussed.
 9 MR. WALSH: Q. But you did not discuss --
 10 correct me if I am wrong. So, you did not discuss the
 11 principal asset that you had security in, the boat, in
 12 any detail?
 13 MR. POULOS: Objection. Argumentative.
 14 (Addressing the witness) If you remember
 15 discussing the boat with Joe --
 16 THE WITNESS: We knew we had a security
 17 interest in the boat and that we would have to go after
 18 the boat. Yes, we discussed that.
 19 MR. WALSH: Q. Did you discuss the value of
 20 that security interest?
 21 A. I don't recall.
 22 I mean, Joe -- Joe understands boats a lot
 23 better than I do. So, he probably would have a better
 24 understanding of what the value of that boat would be
 25 and what the permit value of that boat would be than I

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1 Q. Did you understand that if you seized the
 2 boat, his income would stop?
 3 MR. POULOS: Objection to the use of the word
 4 "seize."
 5 The proper term is "arrest."
 6 MR. WALSH: Q. Will you answer the question?
 7 MR. POULOS: As with prior instructions,
 8 understanding that to be a reference to the arrest.
 9 MR. WALSH: Q. Did you understand that it
 10 would stop his income if the vessel was arrested?
 11 A. I didn't even think about it. I didn't even
 12 think of that. I honestly --
 13 Q. There's no question pending.
 14 (Deposition Exhibit 25 was marked for
 15 identification.)
 16 MR. WALSH: Q. Mr. Roggio, if you could, look
 17 at this document. It's a canceled check dated 12/24/04
 18 (sic).
 19 Do you recognize this document?
 20 A. It's a check written from the Fishing Vessel
 21 Point Loma.
 22 Q. Is that Mr. Cohen's signature?
 23 A. Yes.
 24 Q. And did you, in fact, receive this check?
 25 A. Yes.

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1 would.
 2 Q. Do you recall any discussion with
 3 Joe Cappuccio whereby, because you were concerned
 4 about this divorce and these other lawsuits --
 5 A. Right.
 6 Q. -- what position your ship mortgage would put
 7 you in relative to those debts? Did you have any
 8 discussion like that?
 9 A. No, that -- no.
 10 Q. Did you have any discussion as to whether
 11 Barry held the fishing permit on the vessel, as opposed
 12 to, say, someone else, if you had any such conversation?
 13 A. I don't recall a conversation of who may have
 14 had the fishing permit or...
 15 Q. Do you have any idea what the value of the
 16 permit is?
 17 A. I do not.
 18 Q. Would Mr. Cappuccio know?
 19 A. Yeah, probably.
 20 Q. So, when you had this conversation with
 21 Mr. Cappuccio about Barry's finances, did you at any
 22 time discuss that you can recall whether either you or
 23 Mr. Cappuccio said, "Well, what would this do to Barry's
 24 income from the boat?"
 25 A. I don't recall a conversation like that.

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1 Q. Did you, in fact, cash this check and treat it
 2 as income?
 3 A. We cashed the check. We applied it to his
 4 loan balance.
 5 Q. Thank you.
 6 (Deposition Exhibit 26 was marked for
 7 identification.)
 8 MR. WALSH: Q. Mr. Roggio, this is another
 9 check, signed by Barry Cohen.
 10 That is his signature, is it not?
 11 A. Yes.
 12 Q. What's the amount of this check?
 13 A. \$175,000.
 14 Q. Now, Mr. Roggio, do you recall a provision in
 15 the promissory note that required Mr. Cohen to make a
 16 \$175,000 payment under the note?
 17 MR. POULOS: A specific provision about that?
 18 MR. WALSH: That's correct.
 19 THE WITNESS: I don't think it said anything
 20 about making a \$175,000 payment at any one time.
 21 MR. WALSH: Q. I believe there were monthly
 22 payments, weren't there?
 23 A. It calls for monthly payments or a percentage
 24 of the landing receipts.
 25 Q. And I believe the amount for the monthly

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1 payment was \$3,000.
 2 A. Or 15 percent of the landing receipts,
 3 whichever one is greater.
 4 Q. Right. And did you, at any time after the
 5 note was entered into, send Mr. Cohen a notification as
 6 to what might be due under the landing receipt
 7 provision?
 8 A. No.
 9 Q. But you could calculate that, couldn't you?
 10 A. If he provided me with the proper records,
 11 yeah, I could.
 12 Q. Correct. And when he delivered it to Del Mar,
 13 you knew what his landing receipts were, did you not?
 14 A. Yes.
 15 Q. But at no time did you ever send a letter
 16 saying, "We want you to pay a percentage of the landing
 17 receipts," did you?
 18 A. No.
 19 Q. Did you ever send a notice to him that he was
 20 late on a payment under the note?
 21 A. No.
 22 Q. Did you ever send him a notice that told him
 23 that interest was due? Did you send him a letter or a
 24 writing that interest was due?
 25 A. No.

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1 MR. POULOS: This is 27 and 28?
 2 MR. WALSH: I think they're the same, but I
 3 don't know for sure.
 4 Q. Can you look at those two?
 5 A. These two (indicating)?
 6 Q. Yes.
 7 A. Yes.
 8 Q. Did you prepare them?
 9 A. I did not.
 10 Q. Who prepared them?
 11 MR. POULOS: Which is which? Can we just do
 12 that first?
 13 (Addressing the reporter) Which is 27, and
 14 which is 28?
 15 THE REPORTER: Exhibit 28 has the "3" on it.
 16 MR. POULOS: Exhibit 28 has the "3" on it.
 17 (Discussion off the record.)
 18 MR. WALSH: Q. So, you didn't prepare this?
 19 A. No, I did not.
 20 Q. So, do you know anything about it?
 21 A. I'm somewhat familiar with it, yes.
 22 Q. Can you say who did prepare it?
 23 If you say your lawyers, I don't want to hear
 24 about it.
 25 But who would have prepared it other than you?

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1 Q. I assume the answer would be the same with
 2 respect to Christene Cohen as well.
 3 A. Yes.
 4 Q. So, tell me again the circumstances under
 5 which this \$175,000 payment was made.
 6 Did you talk to Barry about why he made this
 7 payment? That's the first question: Did you talk to
 8 Barry about why he made this payment?
 9 A. Did I talk to Barry?
 10 Q. Yes.
 11 A. I know we had talked about him making a
 12 payment or that a payment was coming.
 13 Q. Tell me about those conversations.
 14 A. He told me that he was going to get an equity
 15 line against his home and that he was going to pay off
 16 some bills and make a payment to -- and make a payment
 17 to Del Mar Seafoods.
 18 MR. POULOS: Can we take a break? I need to
 19 use the restroom.
 20 MR. WALSH: Sure.
 21 (Recess taken: 2:36 p.m. until 2:47 p.m.)
 22 (Deposition Exhibits 27 and 28 were
 23 marked for identification.)
 24 MR. WALSH: Q. I'm going to show you two
 25 exhibits at once.

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1 Do you know?
 2 MR. POULOS: This may have been --
 3 MR. WALSH: This was an exhibit used in court
 4 by you guys.
 5 MR. POULOS: I believe that this -- I'll say
 6 on the record, because I'm not sure if the witness
 7 knows or not, I believe that this was prepared by
 8 Richard Wagner.
 9 (Addressing the witness) So, to the extent
 10 that you know about this -- Richard Wagner being one of
 11 the attorneys -- if you can testify about sums in here,
 12 that's fine.
 13 But you cannot testify about conversations you
 14 had with Mr. Wagner about this document.
 15 THE WITNESS: Okay.
 16 MR. POULOS: But if you understand parts of
 17 the document, then you are certainly able to testify to
 18 that.
 19 MR. WALSH: Actually, I don't plan to ask any
 20 questions because it's attorney work product, at least
 21 what we have discerned is attorney work product.
 22 I'm not so sure what I could do with it now
 23 that you have disclosed that to me.
 24 MR. POULOS: Okay.
 25 MR. WALSH: The Supreme Court has just

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DEPOSITION OF JOSEPH ROGGIO

Exhibit 8

Nov 16 05 04:18p
JUN-17-2007

Case 3:07-cv-02952-WHA

Document 32-2

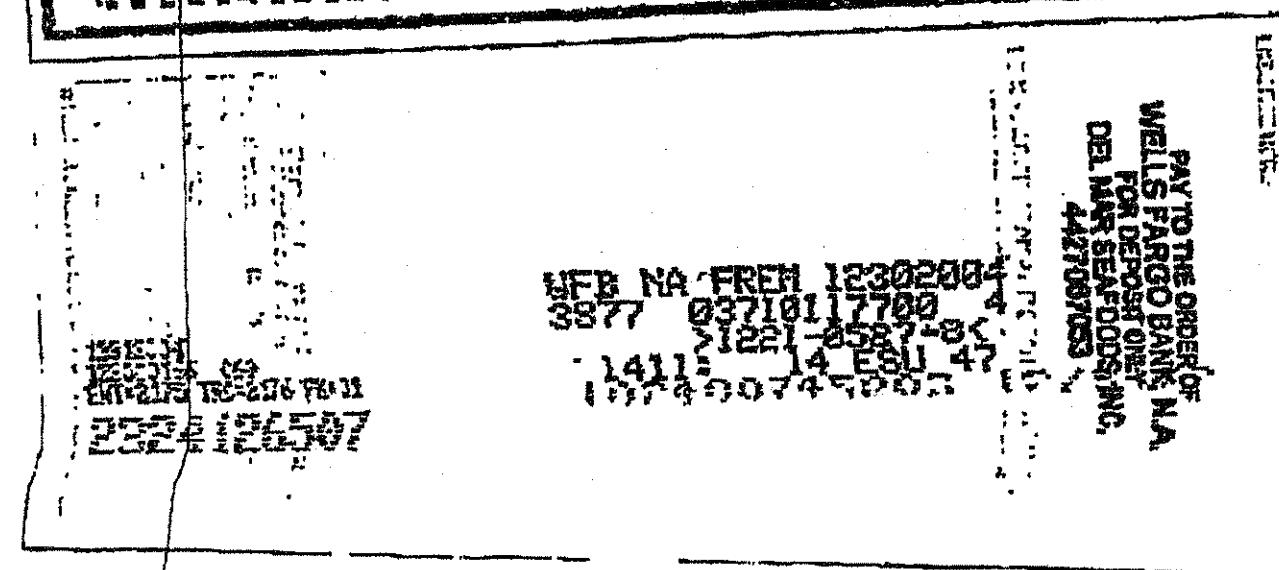
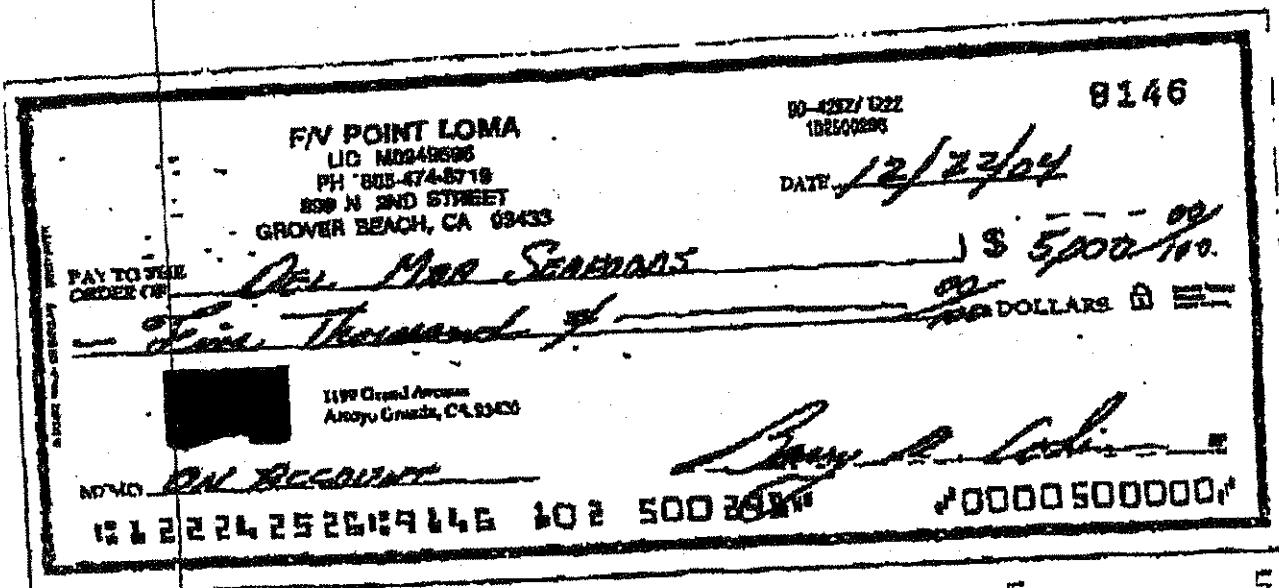
Filed 07/09/07 Page 8 of 22

Jun 27 07 11:23AM

P-2
Page 8 of 22

REMIT TO: SAVOT NATIONAL BANK;

Account: 1025000290
 Check: 9146
 Amount: 5000.00
 Date Cleared: 12/31/04



Nov 16 05 01:52p

Item Viewer-Details

Case 3:07-cv-02952-vv HA Document 32-2 Filed 07/09/12 Page 10 of 16

1

Filed 07/09/07

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Page 1 of

Page 1 of

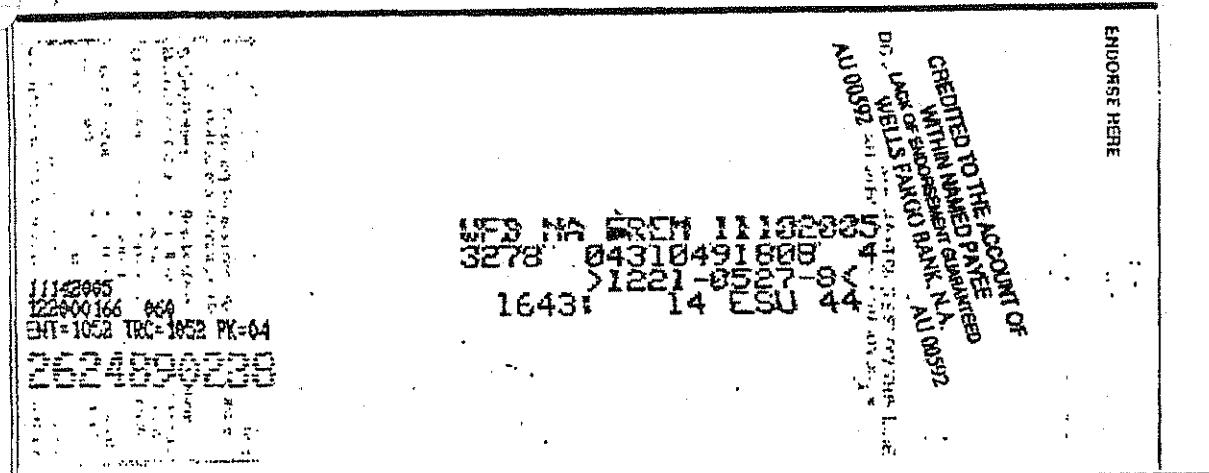
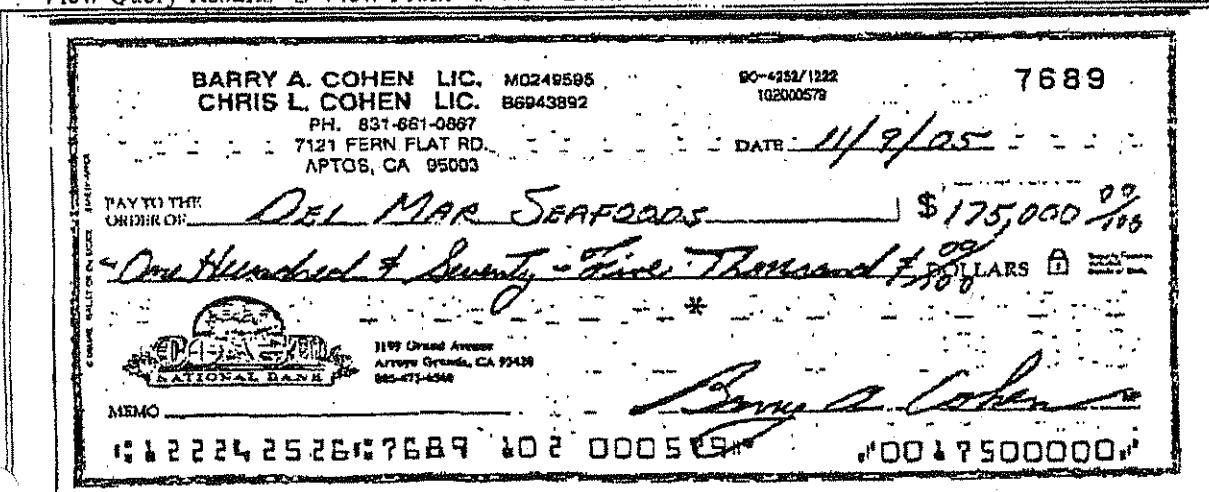
West Cheshire Coast National Bank

A small window titled "File" with a black border. Inside, there are four menu items: "Find", "Clear", "Print", and "Log Off", each in a separate row.

Account Number	102000579
Amount	175,000.00
Posting Date	11/14/2005
Check Number	7689
TranCode	7689
Routing Number	

Tracer Number R:1 B:7 S:15

[View Query Results](#) [View Front](#) [View Back](#) [View Front AND Back](#)



<https://itemresearch.intercept.net/ItemViewer.ASP?WCI=Modify&WCU=BankID%3dfi021coastnational...> 6/21/2017

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Page 001

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Case 3:07-
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Document 32-2

Filed 03/13/2008

Page 88 of 105

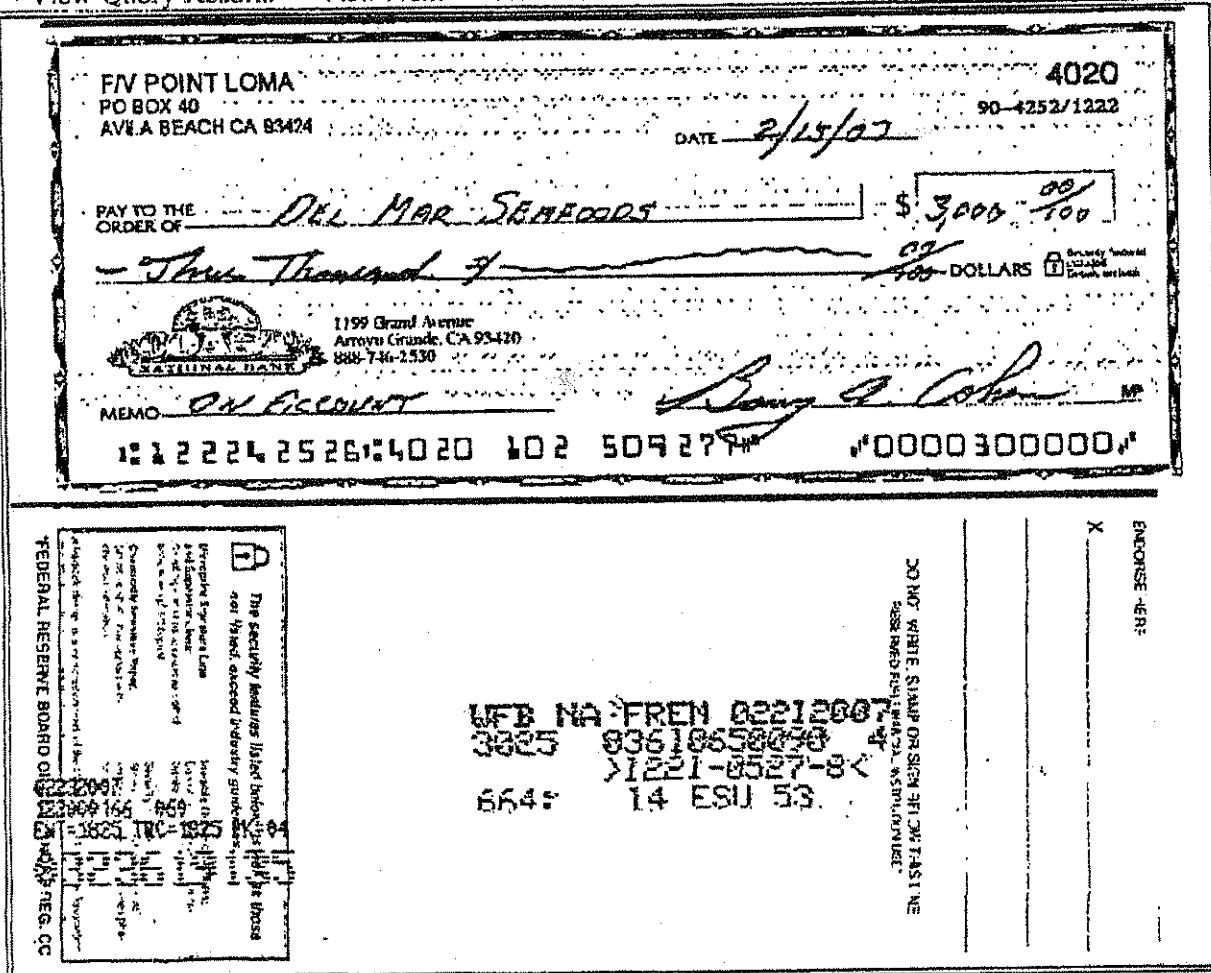
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4 of 16
Page 1 of 1

Web Client-MatImage Coast National Bank

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Print
Log Off

Account Number	102509277	Tracer Number	R:1 B:6 S:1370
Amount	3,000.00		
Posting Date	02/23/2007		
Check Number	4020		
TranCode	4020		
Routing Number			

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<https://itemresearch.intercept.net/ItemViewer.ASP?WCI=Modify&WCU=BankID%3dfl02...> 6/21/2007

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To-DWT SF

Page 004

COHEN 00006

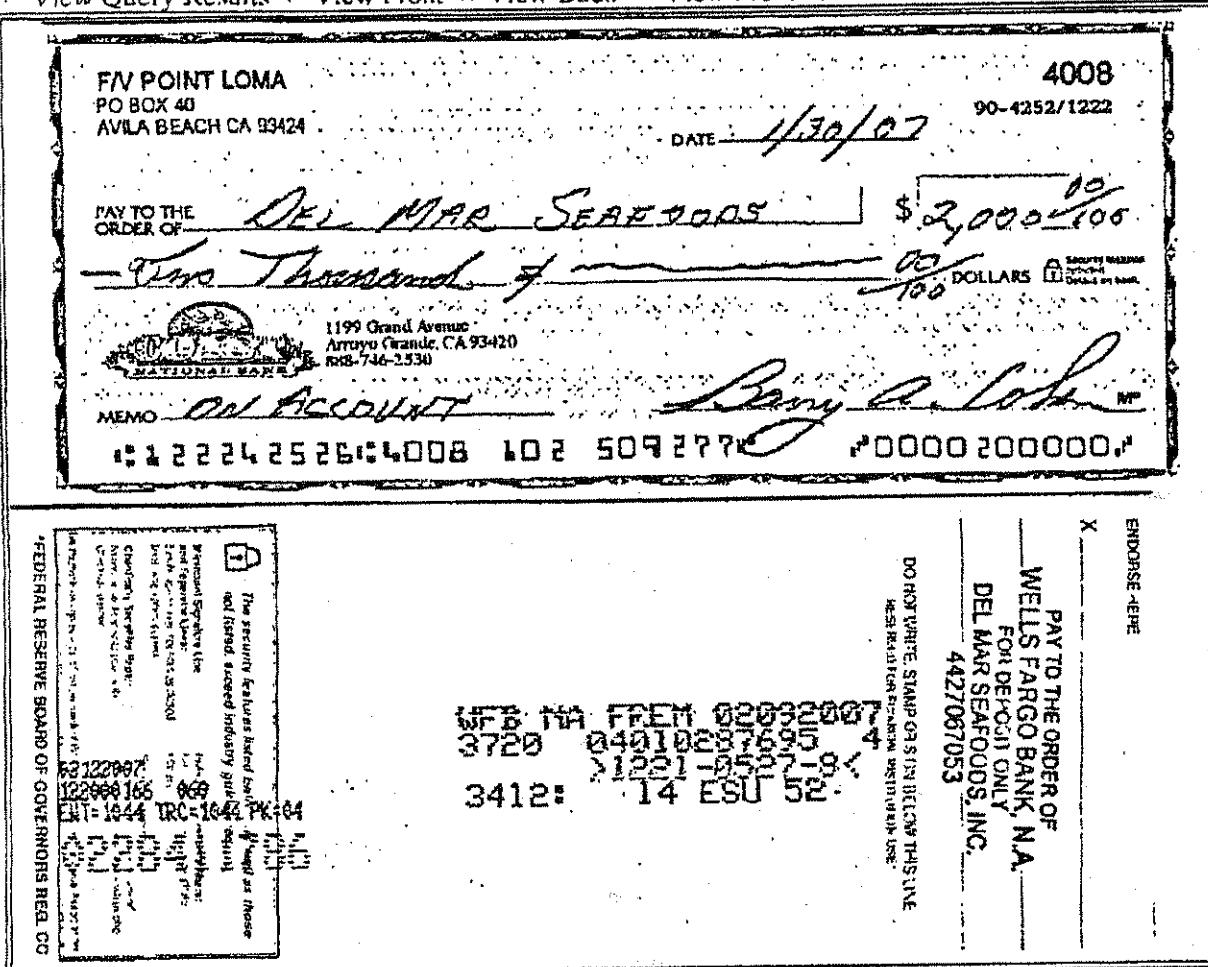
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Clear
Print
Log Off

Account Number	102509277	Tracer Number	R:1 B:4 S:330
Amount	2,000.00		
Posting Date	02/12/2007		
Check Number	4008		
TranCode	4008		
Routing Number			

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Nov 16 05 01:53P Case 3:07-cv-02952-WHA Document 32-2 Filed 07/09/07 Page 16 of 16 P.3
 Item Viewer Details

Web Client-Netimage Coast National Bank

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Clear
Print
Print Out

Account Number	102509277	Tracer Number	R:1 B:5 S:1290
Amount	3,000.00		
Posting Date	04/27/2007		
Check Number	4063		
TranCode	4063		
Routing Number			

View Query Results View Front View Back View Front AND Back

<p>F/V POINT LOMA PO BOX 40 AVILA BEACH CA 93424</p> <p>PAY TO THE ORDER OF <u>Sea Star Seafoods</u></p> <p>Three Thousand \$3000.00</p> <p>1199 Grand Avenue Arroyo Grande, CA 93420 805-746-2530</p> <p>MEMO: <u>Food on Account</u></p> <p>4063 4/23/07</p> <p>4063 90-4252/1222</p> <p>12224252644063 102 509 279 00000300000</p>	<p>ENDORSE HERE</p> <p>X CREDITED TO THE ACCOUNT OF</p> <p>WITHIN NAMED PAYEE</p> <p>LACK OF ENDORSEMENT GUARANTEED</p> <p>WELL'S FARGO BANK, NA</p> <p>AU 00592 AU 00592</p> <p>DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE</p> <p>RE-SEND FOR MANUAL INSTITUTION USE</p> <p>WFB WA FRTM 04232007 3500 03710076007-00 >1221-0000 2865: 14 ESD 40</p>
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The security features listed below are valid as those
not listed, except battery guaranteed.

Microfilm signature line
Notary Public Seal
Signature over printed name
Handwritten signature
Characteristics of paper
Signature on back of check
Counter signature
Other security features

FEDERAL RESERVE BOARD REG. CC

<https://itemresearch.intercept.net/ItemViewer.ASP?WCI=Modify&WCU=BankID%3df02...> 6/21/2007

Exhibit 9

Jan 23 06 07:12p

P.2

ASSIGNMENT OF JOINT VENTURE INTEREST

This two-page ASSIGNMENT OF JOINT VENTURE INTEREST ("Assignment") is made effective as of the 22nd day of October, 2004 (the "Effective Date"), by DBL MAR SEAFOODS, INC. (hereinafter referred to as "Assignor") in favor of BARRY A. COHEN ("Assignee").

RECITALS:

THIS ASSIGNMENT is made with reference to the following facts:

A. Assignor and Assignee were joint venturers operating a fish processing business (the "Joint Venture") on Harford Pier at Port San Luis, California from 1999 until 2004. Assignor and Assignee each had a fifty-percent interest in the net profits of the Joint Venture.

B. Assignor withdrew from the Joint Venture in about September of 2004.

C. Assignee sued the Port San Luis Harbor District ("District") in San Luis Obispo Superior Court, Case No. CV 040897, (the "Case") to, in part, recover from the District damages that Assignee alleges were suffered by the Joint Venture while it operated at the Harford Pier.

D. Assignor did not and does not intend to pursue any claims against the District relating to the Joint Venture, and also does not intend to participate in the Case between Assignee and the District. By that certain document dated December 15, 2005, Assignor previously intended to and did assign to Assignee, to the fullest extent possible, any and all of Assignor's right, title and interest in the Joint Venture, including but not limited to the Joint Venture's claims, if any, against the District.

E. By this Assignment, Assignor intends to confirm and reaffirm its prior assignment referenced in Recital D above.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor agrees as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS:** The above Recitals, including all facts and defined terms set forth therein, are incorporated herein by this reference and are a part hereof.

2. **ASSIGNMENT:** Assignor hereby confirms and reaffirms its prior assignment and transfer to Assignee to the fullest extent possible and without restriction, all of Assignor's entire interest in the Joint Venture, including but not limited to the Joint Venture's claims, if any, against the District, and including without limitation all rights, entitlements and/or interests in and to any claims, rights of action, causes of action, recoveries, damages or other legal recourse owned or held by the Joint Venture.

CRAAW41SRK5W046.I

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P. 3

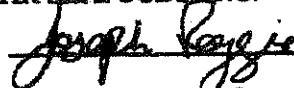
IRREVOCABILITY OF ASSIGNMENT: Assignor intends, represents, and warrants that the assignment described herein is irrevocable, and that Assignor has no further interest whatsoever in the assigned interest.

IN WITNESS WHEREOF, Assignor has executed this Assignment effective as of the day and year first above written.

Assignor:

DEL MAR SEAFOODS, INC.

By:

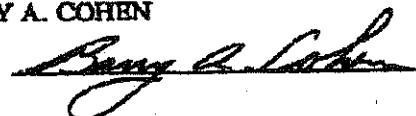


Name: Joseph Roggio

Assignee hereby accepts this Assignment, effective as of the day and year first shown written.

Assignee:

BARRY A. COHEN



FBI LABORATORY

-2-

Exhibit 10

1 James P. Walsh, CSB. No. 184620
2 Gwen Fanger, CSB No. 191161
DAVIS WRIGHT TREMAINE LLP
3 505 Montgomery Street, Suite 800
San Francisco, California 94111-3611
4 Telephone: (415) 276-6500
Facsimile: (415) 276-6599
5 budwalsh@dwt.com

6 Attorneys for Defendants and Claimant
7 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AVIS WRIGHT TREMAINE LLP
11 DEL MAR SEAFOODS, INC.,
12 Plaintiff,
13 v.
14 BARRY COHEN, CHRIS COHEN (aka
15 CHRISTENE COHEN), *in personam* and,
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8 foot long fishing vessel, her engines,
tackle, furniture apparel, etc., *in rem*, and
Does 1-10,
16
17
18 Defendants.)
No. C-07-2952-WHA
DEFENDANTS BARRY COHEN,
CHRIS COHEN'S (aka CHRISTENE
COHEN) FIRST SUPPLEMENTAL
RESPONSE TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES

PROPOUNDING PARTY: PLAINTIFF DEL MAR SEAFOODS, INC.

RESPONDING PARTY: DEFENDANTS BARRY and CHRISTENE COHEN

SET NO.: ONE

Barry and Christene Cohen (“Responding Parties”) hereby submit the following First Supplemental Response to Plaintiff’s First Set of Interrogatories (the “Interrogatories”), propounded by Plaintiff, Del Mar Seafoods, Inc. (“Del Mar”).

DAVIS WRIGHT TREMAINE LLP

GENERAL LIMITATIONS AND OBJECTIONS

1. Responding Parties have not completed their investigation of the facts relating to the case and have not completed its discovery. The following responses, therefore, are provided without prejudice to the production or use of additional information not set forth in the responses. Furthermore, Responding Parties do not waive their right to object to the use at trial of any information identified by the responses.

2. Responding Parties object to the Interrogatories to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, constitutional or statutory rights of privacy, the trade secrets privilege or any other applicable privilege, or documents containing commercially sensitive information.

3. Responding Parties further object to the Interrogatories to the extent they seek to impose obligations on Responding Parties beyond those established by the Federal Rules of Civil Procedure.

4. Specific objections to each Interrogatory are made on an individual basis in the responses below. The General Responses and Objections are hereby incorporated into the response to each separate interrogatory as though set forth in full therein.

5. Responding Parties renew their objections to Interrogatories numbers 26-30 as they exceed 25, the maximum number of interrogatories allowed under Fed. R. Civ. P. 33.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

Responding Parties provide the supplemental responses to Plaintiff's Interrogatories and renew their objections set forth in their Responses to the Interrogatories to the instructions, definitions, and Interrogatories to the extent that they purport to require Responding Parties to locate or produce information not known to them or not in their possession, custody or control. Responding Parties also object to the extent that they purport to impose on Responding Parties any obligations greater than those provided by the Federal Rules of Civil Procedure, case law and other law governing the proper scope and extent of discovery. Responding Parties further object

1 on the grounds that the definitions of "YOU," "YOUR," "defendants," and "YOURSELF" are
2 overbroad, unduly burdensome and oppressive.

3 Responding Parties adopt the terms defined by the Plaintiff solely for convenience in
4 responding to the requests herein. Responding Parties do not accept or concede that any of the
5 terms or definitions are appropriate, descriptive or accurate. The above general objections are
6 incorporated into each response below.

7 **SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

8 **INTERROGATORY NO. 2:**

9 IDENTIFY by name, last known address, phone number, and type of service provided,
10 each person and company that performed maintenance or repair services on the Vessel or provided
11 equipment used aboard the vessel between January 1, 2001 and the present.

12 **RESPONSE TO INTERROGATORY NO. 2:**

13 Responding Parties renew their objections to this interrogatory on the grounds that it is
14 compound containing at least nine distinct subparts requesting 1) the name; 2) the last known
15 address; 3) the phone number, and 4) the type of service provided by 5) each person and 6) each
16 company that performed 7) maintenance or 8) repair or 9) equipment to the F/V Point Loma
17 between January 1, 2001 and the present. Responding Parties also object to this interrogatory on
18 the grounds that the identity and contact information of the persons and companies providing
19 maintenance, repair, and equipment to the vessel is not relevant to the issues in this action, the
20 information is unlikely to lead to admissible evidence, and the time period for which the
21 information is requested is overly broad and irrelevant in that it covers a period of time well before
22 the Note and Mortgage, the basis of this lawsuit, were even signed. Without waiving these
23 objections, Responding Parties supplement their response as follows: in addition to the
24 information provided in Responding Parties' initial response to Interrogatories, information, if
25 any, responsive to this interrogatory has been made available for Plaintiff's inspection at
26 Defendants' Avila Beach plant. Responding Parties do not waive any privileges with respect to
27 Plaintiff's inspection of documents at the Avila Beach plant.
28

DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE LLP

INTERROGATORY NO. 3:

1 IDENTIFY the fishing net that YOU have alleged was lost during the arrest of the Vessel
 2 by providing the size and type of net, the date of purchase and purchase price, the location from
 3 where the net was purchased, and the documents that support this information.

RESPONSE TO INTERROGATORY NO. 3:

6 Responding Parties renew their objection to this interrogatory on the grounds that it is
 7 compound containing at least six subparts requesting 1) the size of the net 2) the type of the net, 3)
 8 the date of purchase of the net, 4) the purchase price, 5) the location from where the net was
 9 purchased, and 6) documents that support this information. Responding Parties will construe this
 10 interrogatory as two requests to the extent the information in subparts 1-5 seek information to
 11 substantiate Responding Parties' claim for damages for the lost net. Without waiving this
 12 objection, Responding Parties supplement their response to part 6 of this request as follows:
 13 Additional documents supporting the information regarding the lost net are identified as: Invoice
 14 from K&K Knots, dated October 1, 2007 (COHEN 00719); check register from Coast National
 15 Bank (COHEN 00720); and Bill for Net.txt (COHEN 00721)

INTERROGATORY NO. 11:

17 State the amount of attorneys' fees, if any, that YOU owed to the law firm of Miller, Starr
 18 & Regalia as of August 1, 2007.

RESPONSE TO INTERROGATORY NO. 11:

20 Responding Parties renew their objections to this interrogatory on the grounds that is
 21 irrelevant to the issues in this case; namely the amount of the debt remaining under the Note and
 22 the unlawful arrest of the Vessel. Notwithstanding this objection and without waiving it,
 23 Responding Parties supplement their response as follows: This interrogatory seeks a legal opinion
 24 as to whether Mr. Cohen in fact owes anything to Miller Starr & Regalia. It is Mr. Cohen's
 25 position that he does not owe any attorney fees to Miller Starr & Regalia as supported by the
 26 malpractice suit he is considering filing against them. Moreover, Miller Starr & Regalia have
 27 made no effort to collect any fees against him.

28

DAVIS WRIGHT TREMAINE LLP

1 **INTERROGATORY NO. 12:**

2 State what YOUR gross earnings were for each voyage of the Vessel between October 31,
3 2001 and the present.

4 **RESPONSE TO INTERROGATORY NO. 12:**

5 Responding Parties renew their object to this interrogatory on the grounds that it is overly
6 broad and unduly burdensome as it requests gross earnings for *each* voyage of the Vessel back to
7 2001, well before the timing of the underlying issues in this case. Responding Parties further
8 object on the grounds that it requests confidential, competitive information and is irrelevant to the
9 underlying issues in this case, namely the amount of the debt remaining under the Note (signed in
10 2003) and the wrongful arrest of the Vessel. Without waiving these objections, Responding
11 Parties respond that Exhibit 1, prepared by Barry Cohen and attached hereto, is an accurate
12 description of the monthly gross earnings of the Vessel for the end of 2005 through the present.

13 **INTERROGATORY NO. 13:**

14 State what YOUR net earnings (gross earnings less expenses) were for each voyage of the
15 Vessel between October 31, 2001 and the present.

16 **RESPONSE TO INTERROGATORY NO. 13:**

17 Responding Parties renew their objections to this interrogatory on the grounds that it is
18 overly broad and unduly burdensome as it requests gross earnings for *each* voyage of the Vessel
19 back to 2001, well before the timing of the underlying issues in this case. Responding Parties
20 further object on the grounds that it requests confidential, competitive information and is irrelevant
21 to the underlying issues in this case, namely the amount of the debt remaining under the Note
22 (signed in 2003) and the wrongful arrest of the Vessel. Without waiving these objections,
23 Responding Parties respond that Exhibit 1 prepared by Barry Cohen and attached hereto, is an
24 accurate description of the monthly net earnings of the Vessel for the end of 2005 through the
25 present.

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1 **INTERROGATORY NO. 23:**

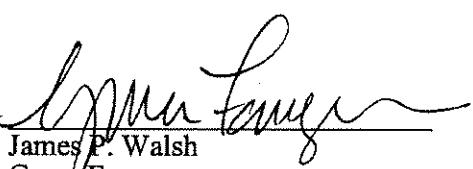
2 IDENTIFY the bank from whom YOU obtained the loan to make the lump sum payment
3 of \$175,000.00 against the Note and Mortgage, including the name of the bank, the branch, the
4 person at the bank that YOU dealt with, YOUR loan number, and the loan amount.

5 **RESPONSE TO INTERROGATORY NO. 23:**

6 Responding Parties renew their objections to this interrogatory on the grounds that it is not
7 reasonably calculated to lead to the discovery of admissible evidence and that it is unduly
8 burdensome, harassing, violates their right to privacy. Without waiving these objections,
9 Responding Parties supplement their response as follows: Any public information responsive to
10 this interrogatory is equally available to Plaintiff through a public records search of their home
11 secured by the loan that was located at 7121 Fern Flat Rd. in Aptos, California.

12
13
14 Dated: January 9, 2008.
15

16 DAVIS WRIGHT TREMAINE LLP

17 By: 

18 James P. Walsh
19 Gwen Fanger

20 Attorneys for DEFENDANTS and
21 CLAIMANT BARRY COHEN, CHRIS
22 COHEN (aka CHRISTENE COHEN), the F/V
POINT LOMA and Claimant, F/V POINT
LOMA FISHING COMPANY, INC.

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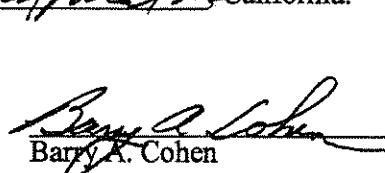
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VERIFICATION

I, Barry A. Cohen, declare:

I am authorized to sign this Verification on behalf of Responding Parties. I have read the foregoing Supplemental Responses to Plaintiffs First Set of Interrogatories to Defendants Barry and Christene Cohen and know the contents thereof, and based on information and belief, I believe the responses to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of January, 2008 at San Francisco, California.


Barry A. Cohen

DAVIS WRIGHT TREMAINE LLP

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

I caused to be served the foregoing **DEFENDANTS BARRY COHEN, CHRIS COHEN'S (aka CHRISTENE COHEN) SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** on the parties indicated below by the following means:

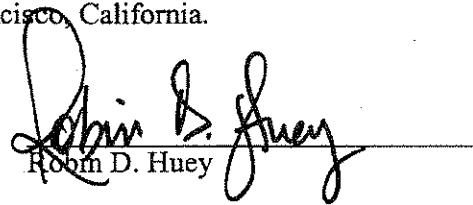
I enclosed a true and correct copy of said document in an envelope, and consigned it for hand delivery by messenger on January 10, 2008, following ordinary business practice to the following:

Gregory W. Poulos
 Max L. Kelley
 Cox, Wootton, Griffin,
 Hansen & Poulos LLP
 190 The Embarcadero
 San Francisco, CA 94105

Richard P. Wagner
 The Law Offices of Richard P. Wagner
 400 Oceangate, Suite 700
 Long Beach, CA 90802

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on January 10, 2008, at San Francisco, California.



Robin D. Huey

EXHIBIT 1

TRIPS BY THE MONTH

<u>MONTH/YR.</u>	<u>GROSS</u>	<u>NET</u>	<u>NOTES</u>
11/05	9,939.96	8,314.12	PARTIAL MONTH
12/05	11,172.89	6,794.21	
1/06	15,323.89	8,462.42	
2/06	13,879.91	9,332.91 + 1,835.54 = 11,168.45	
3/06	8,534.61	6,036.65	
4/06	30,398.60	24,086.42	NEW CAPTAIN
5/06	33,312.88	23,555.18	
6/06	17,846.99	10,246.62	
7/06	27,572.37	15,673.20	
8/06	12,142.75	8,230.51	
9/06	43,148.76	35,031.22	
10/06	27,697.28	22,296.22	
11/06	73,184.03	69,525.31	
12/06	19,278.69	15,138.42	
1/07	19,971.04	16,686.00	
2/07	35,233.11	23,001.52	
3/07	27,136.59	22,153.67	
4/07	37,969.01	23,138.57	
5/07	32,745.85	25,539.66	
6/07 ① TRIP	11,790.84	9,160.60	BOAT "ARRESTED"
7/07	\$	\$	UNDER "ARREST"
8/07	\$	\$	UNDER "ARREST"
9/07	49,494.83	35,534.02	BOAT RELEASED

TRIPS By THE MONTH

<u>MONTH/YR.</u>	<u>GROSS</u>	<u>NET</u>	<u>NOTES</u>
10/07	36,523.05	27,228.31	
11/07	40,900.71	36,288.31	